Passage of the

Forth Road Bridge Bill 2012

SPPB 188
Passage of the
Forth Road Bridge Bill 2012
SP Bill 20 (Session 4), subsequently 2013 asp 8
SPPB 182

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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
- Stage 2: the Bill returns to a committee for detailed consideration of amendments;
- Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

**Notes on this volume**

The Bill to which this volume relates followed the standard 3 stage process described above.

The Illustrative Plan of Length of Road to be Trunked was published online only at Introduction but is included here. PDF users will be able to zoom into the document for easier viewing.

Letters to the Finance Committee, received during their consideration of the Bill at Stage 1, are included in this volume after material from the Stage 1 report.

Groupings for Stage 2 were not produced as only one amendment was lodged. An As Amended print was also not produced. A Marshalled List, Groupings, and As Passed prints for Stage 3 were not required as no further amendments were lodged.
Forth Road Bridge Bill
[AS INTRODUCED]

CONTENTS

Section

1 Trunk roads
2 Transfer of property and liabilities etc.
3 Transfer of staff
4 Dissolution of Forth Estuary Transport Authority
5 Byelaws
6 Interpretation
7 Commencement
8 Short title

__________

Schedule—Description of road to become trunk road
An Act of the Scottish Parliament to make provision about the management and maintenance of the Forth Road Bridge.

1  Trunk roads
   (1) The length of road described in the schedule becomes a trunk road on the date this subsection comes into force.
   (2) Any enactment that provides for property and liabilities to transfer to the Scottish Ministers on account of a road becoming a trunk road, does not apply to the extent that it would transfer property and liabilities from the Authority to the Scottish Ministers.
   (3) Nothing in this section prevents the Scottish Ministers from detrunking the road which becomes a trunk road by virtue of subsection (1), or any part of that road, by making an order to that effect under section 5 of the Roads (Scotland) Act 1984 (c.54).
   (4) In the definition of “trunk road” in section 151(1) of the Roads (Scotland) Act 1984, after “Forth Crossing Act 2011 (asp 2)” insert “or by virtue of section 1 of the Forth Road Bridge Act 2013 (asp 00)”.

2  Transfer of property and liabilities etc.
   (1) All property (including rights) and liabilities of the Authority are transferred to, and vest in, the Scottish Ministers.
   (2) Anything done by, on behalf of or in relation to the Authority is to be treated as having instead been done by, on behalf of or in relation to the Scottish Ministers.
   (3) Any reference to the Authority in a contract, deed or other document giving rise to a legal obligation, is to be read as a reference to the Scottish Ministers.
   (4) Any legal proceedings raised by, or against, the Authority may be continued by, or against, the Scottish Ministers.

3  Transfer of staff
   (1) On the date this subsection comes into force, any person employed by the Authority is transferred into the employment of the bridge operator.
   (2) In subsection (1), “the bridge operator” means the person appointed by the Scottish Ministers to manage and maintain the Forth Road Bridge.
(3) The transfer effected by subsection (1) is a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).

4 Dissolution of Forth Estuary Transport Authority

(1) The Authority is dissolved.

(2) The 2002 Order is revoked.

(3) The following enactments are repealed—

(a) Forth Road Bridge Order Confirmation Act 1947 (c.iv),
(b) Forth Road Bridge Order Confirmation Act 1958 (c.vi),
(c) Forth Road Bridge Order Confirmation Act 1960 (c.iii).

5 Byelaws

(1) Despite the revocation of the 2002 Order, any byelaw made under it, or which continued to have effect by virtue of it, continues to have effect by virtue of this subsection as it did immediately before the 2002 Order’s revocation.

(2) In any byelaw which continues to have effect by virtue of subsection (1), references to the Authority are to be read as references to the Scottish Ministers.

(3) The Scottish Ministers’ power to make a traffic regulation order under section 1 of the Road Traffic Regulation Act 1984 (c.27) includes the power to revoke any byelaw which continues to have effect by virtue of subsection (1).

6 Interpretation

(1) In this Act—

“the 2002 Order” means the Forth Estuary Transport Authority Order 2002 (S.S.I. 2002/178),
“the Authority” means the Forth Estuary Transport Authority constituted by the 2002 Order,
“road” has the same meaning as in the Roads (Scotland) Act 1984.

(2) References to the Authority in the following provisions are to be read as if immediately followed by the words “or the Forth Road Bridge Joint Board constituted in terms of the Forth Road Bridge Confirmation Order 1947 (however described)”—

(a) subsections (2) and (3) of section 2, and
(b) section 5(2).

7 Commencement

(1) Sections 6, 8 and this section come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

8 Short title

The short title of this Act is the Forth Road Bridge Act 2013.
SCHEDULE
(introduced by section 1)

DESCRIPTION OF ROAD TO BECOME TRUNK ROAD

1 That length of road, of approximately 3.11 kilometres, partly within the boundary of the City of Edinburgh Council and partly within the boundary of Fife Council—
   (a) from a point on the south side of the Forth Road Bridge on the A90, 296 metres or thereby north of the northmost face of the overbridge carrying the roundabout on which the B800 and A904 meet (at grid reference NT 312456, 678010),
   (b) to a point on the north side of the Forth Road Bridge, 359 metres or thereby north of the northmost abutment of the Forth Road Bridge (at grid reference NT 312607, 681112).

2 In paragraph 1, “grid reference” means Ordnance Survey National Grid reference.
Forth Road Bridge Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the management and maintenance of the Forth Road Bridge.

Introduced by: Nicola Sturgeon
On: 11 December 2012
Bill type: Government Bill
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)

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 2006\(^1\) (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

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

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 1984\(^2\) (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.


\(^3\) [http://www.scottish.parliament.uk/S4_Bills/Forth_Road_Bridge_Bill/ForthRoadBill_map.pdf](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 2002\(^4\) (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 1984\(^5\) 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.


\(^5\) 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.

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⁶ [http://www.transportscotland.gov.uk/road/maintenance/responsibilities/operating-companies](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 2008\(^8\) 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).

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\(^7\) [http://www.performanceauditgroup.co.uk/](http://www.performanceauditgroup.co.uk/)


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

Table 1 – FETA – Previous funding

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Grant</th>
<th>Grant for one-off toll abolition costs</th>
<th>Tolls/other</th>
<th>Total £000’s</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Revenue</td>
<td>Capital</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2011/12</td>
<td>5,100</td>
<td>8,600</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2010/11</td>
<td>5,115</td>
<td>8,730</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2009/10</td>
<td>5,674</td>
<td>7,381</td>
<td>-</td>
<td>144</td>
</tr>
<tr>
<td>2008/09</td>
<td>7,070</td>
<td>6,895</td>
<td>2,956</td>
<td>493</td>
</tr>
<tr>
<td>2007/08</td>
<td>-</td>
<td>6,445</td>
<td>544</td>
<td>10,879</td>
</tr>
<tr>
<td>2006/07</td>
<td>-</td>
<td>22,955</td>
<td>-</td>
<td>12,714</td>
</tr>
<tr>
<td>2005/06</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>12,674</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Capital - £m</th>
<th>Resource - £m</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012-13</td>
<td>4.9</td>
<td>5.1</td>
</tr>
<tr>
<td>2013-14</td>
<td>3.9</td>
<td>5.1</td>
</tr>
<tr>
<td>2014-15</td>
<td>5.0</td>
<td>5.1</td>
</tr>
</tbody>
</table>

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 accounts\(^\text{10}\) 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

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

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 Statement\textsuperscript{11}. 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)

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

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.

\textsuperscript{11} http://www.lpf.org.uk/downloads/file/340/funding_strategy_statement_march_2012
These documents relate to the Forth Road Bridge Bill (SP Bill 20) as introduced in the Scottish Parliament on 11 December 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](http://www.ojeu.eu)

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

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

<table>
<thead>
<tr>
<th>Description</th>
<th>Option 1</th>
<th>Option 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>The new Forth Crossing and FRB are managed and maintained by the same bridge operating company, appointed through a competitive tender.</td>
<td></td>
</tr>
<tr>
<td><strong>Total OPEX costs per annum £</strong></td>
<td>9,103,853</td>
<td>7,891,049</td>
</tr>
<tr>
<td><strong>Lower range of estimate £</strong></td>
<td>6,827,890</td>
<td>5,918,287</td>
</tr>
<tr>
<td><strong>Higher range of estimate £</strong></td>
<td>11,379,816</td>
<td>9,863,811</td>
</tr>
</tbody>
</table>

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

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

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Option 1</th>
<th>Option 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description</td>
<td>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.</td>
<td>The new Forth Crossing and FRB are managed and maintained by the same bridge operating company, appointed through a competitive tender.</td>
</tr>
<tr>
<td>Projected number of staff employed (FTE)</td>
<td>110</td>
<td>92</td>
</tr>
<tr>
<td>Staff costs £</td>
<td>5,750,000</td>
<td>5,043,000</td>
</tr>
<tr>
<td>Non-staff costs £</td>
<td>3,353,853</td>
<td>2,848,049</td>
</tr>
<tr>
<td>Total OPEX costs per annum £</td>
<td>9,103,853</td>
<td>7,891,049</td>
</tr>
</tbody>
</table>

**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.”
POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Forth Road Bridge Bill introduced in the Scottish Parliament on 11 December 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 20–EN.

POLICY OBJECTIVES OF THE BILL

Summary

2. 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 the greatest efficiencies, in cost and operational terms, will be delivered by contracting a single bridge operating company to manage and maintain:

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

3. A plan of the geographical limits of the proposed contract is attached as an Annex. The procurement process will begin in 2013 with the contract starting in mid-2015.

4. In order to contract out the functions of managing and maintaining the FRB, the Scottish Government must take those functions over from the Forth Estuary Transport Authority (FETA), which is the statutory body presently tasked with managing and maintaining the FRB. The Bill therefore:

- trunks the road over the FRB (which means the Scottish Government becomes the roads authority),
- transfers all of FETA’s property, assets and liabilities to the Scottish Government, and
- dissolves FETA.
5. The length of road to be trunked is illustrated in Plan FRBB.01 which is available to view on the Forth Road Bridge Bill page of the Scottish Parliament Website.

6. The skills, knowledge and professionalism of FETA’s employees are greatly valued by the Scottish Government. Protection of their jobs is built into the Bill. It provides that all of FETA’s employees will transfer into the employment of the company appointed to operate the bridge. Further, it provides that Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply to the transfer. In addition, the Scottish Government will make it a contract requirement, and will provide guarantor status, to ensure that the appointed bridge operating company gains admission to the Lothian Pension Fund to allow FETA employees to continue with their current pension scheme.

Background

7. The Forth Road Bridge Order Confirmation Act 1947 established the Forth Road Bridge Joint Board (the “Joint Board”). The Act gave the Joint Board power to construct and maintain certain specified works including the construction of “a bridge over the Firth of Forth” which is now known as the Forth Road Bridge (FRB).

8. The FRB extends between the local authority areas of the City of Edinburgh Council and Fife Council. Traffic over the FRB connects between those two local authority areas and further links that traffic to the road network in the local authority areas of Perth and Kinross Council and West Lothian Council.

9. The Joint Board generated income through tolling bridge users but were restricted on how they could spend tolling revenue and in turn, how they could address the growing issue of congestion on the FRB. To address this, the then Scottish Executive promoted the Forth Estuary Transport Authority 2002 Order (“the 2002 Order”) primarily to provide the body responsible for the operation of the FRB with wider powers to deliver solutions to congestion. The 2002 Order used section 69 of the Transport (Scotland) Act 2001 to dissolve the Joint Board and replace it with a new body to be known as the Forth Estuary Transport Authority (FETA).

10. The 2002 Order transferred all property, rights and liabilities of the Joint Board to FETA. Employees of the Joint Board were transferred into the employment of FETA.

11. The work of FETA is undertaken by around 72 employees and is overseen by the FETA Board.

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1. [http://www.scottish.parliament.uk/S4_Bills/Forth_Road_Bridge_Bill/ForthRoadBill_map.pdf](http://www.scottish.parliament.uk/S4_Bills/Forth_Road_Bridge_Bill/ForthRoadBill_map.pdf)
12. The removal of tolls from the FRB in 2008 closed a revenue stream for FETA. Since then, the Scottish Government has fully funded FETA through an annual grant for managing and maintaining the FRB and to support capital investment. Transport Scotland (an agency of the Scottish Government) act as a sponsoring body to FETA, administering the annual grant and providing strategic direction in line with Government policy.

Need for change

13. By 2014, the FRB will have been an essential part of the national road infrastructure for 50 years. It is vital to the economy of Fife, an essential link for the East Coast Corridor and crucial to the connectivity of Fife and beyond.

14. The FRB now carries around 25 million vehicles every year, almost six times the traffic volumes it originally carried and the weight of heavy goods vehicles has also increased. The FRB suffers a number of operational shortcomings including susceptibility to restrictions and closures during strong winds, and a lack of hard shoulders to provide resilience.

15. Additionally, the main suspension cables are showing significant signs of deterioration as a result of corrosion. Though the suspension cables can be repaired the work to repair them would be a major undertaking and would cause sustained and significant periods of disruption.

16. The Scottish Government undertook the Forth Replacement Crossing Study in 2007 to assess the options for protecting this vital economic link and concluded that a replacement crossing should be constructed. A technical assessment of the capability of the FRB was undertaken which concluded that, if the deterioration is stabilised, it could support the reduced loading of public transport, pedestrians and other specified users.

17. This led to the Scottish Government announcing in December 2008 that, although the FRB is no longer suitable as the main road crossing for the Firth of Forth, the FRB would operate as part of a managed crossing scheme alongside the new Forth Crossing. The FRB will be retained as a dedicated corridor for public transport, pedestrians and cyclists and the new Forth Crossing will carry all other traffic subject to motorway regulations.

18. Under the authority of the Forth Crossing Act 2011, the Scottish Government have commenced construction of a new cable stayed bridge to the west of the existing FRB. Construction is on schedule for completion in 2016.

19. The Forth Crossing Bill Policy Memorandum stated that a maintenance operator to manage and maintain the new Forth Crossing would not need to be identified prior to 2013. This timescale was driven by the need for a maintenance operator to be in place in advance of the opening of the new Forth Crossing in 2016. This is to allow sufficient time for the operating

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7 http://archive.scottish.parliament.uk/s3/bills/33-ForthCrossing/b33s3-introd-pm.pdf
company appointed to manage and maintain the new Forth Crossing to familiarise itself with the structure during the final stages of construction.

20. The Forth Crossing Bill Policy Memorandum also stated that “the role that FETA might play in respect of the new bridge will be a consideration within the assessment of options”. When the Forth Crossing Bill received Royal Assent in January 2011, the Transport Minister instructed Transport Scotland to work with FETA officials to identify the options for the management and maintenance of both the new Forth Crossing and the FRB.

21. The Transport Minister answered a Parliamentary Question [S4W-04052] on 16 November 2011 to inform the Scottish Parliament of the outcome of this assessment –

“Scottish Ministers instructed Transport Scotland to work jointly with Forth Estuary Transport Authority (FETA) officials to identify the technically feasible options for the future management and maintenance of the new Forth Crossing and the Forth Road Bridge (FRB). Following careful consideration of these options, I have concluded that a competitive tender exercise will be held for one contractor to manage and maintain both the new Forth Crossing and FRB, in its new capacity as a dedicated public transport corridor.

The skills, knowledge and professionalism of FETA staff is greatly valued for the Scottish Government and I have given assurance to all FETA staff that their jobs will be protected by Transfer of Undertakings (Protection of Employment) Regulations.

In addition, this option will deliver value for money through market testing for both bridges and offers operational efficiencies through a twin-bridge strategy. Primary legislation will be brought to the Scottish Parliament to dissolve the FETA Joint Board and to transfer the assets required for the safe operation of the FRB to Scottish Ministers.

Recognising the cultural and historical importance of the Forth bridges to the local communities, Transport Scotland will bring a strategic and collaborative approach to the management and operation of the bridges and to ensure regular and meaningful engagement with local elected members, community councils and residents.”

22. The Convener of FETA, Councillor Tony Martin, responded to the Ministerial statement on 18 November 2011 –

“We are pleased that the Minister has accepted our view that a single body should be appointed to manage the new crossing and the existing bridge together, taking advantage of existing staff and resources.

There are obvious advantages to be gained by avoiding duplication of resources and by one body co-ordinating maintenance and traffic management between the two structures.

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8 http://www.scottish.parliament.uk/S4_ChamberDesk/WA20111116.pdf
We always recognised that this might mean dissolving FETA as currently constituted, although it is important that some local accountability is retained in light of the impact of bridge works on the local communities. We are pleased that the Scottish Government is addressing this issue via the establishment of a Forth Bridges Forum.\(^9\)

We welcome the news that there will be no compulsory redundancies, as it is vital that we retain the unique knowledge and skills of the highly experienced team already on site. Our overall priority is what is best for the Forth bridges and the people who rely on them, so we look forward to working closely with Transport Scotland to make a success of these new arrangements.”

### ALTERNATIVE APPROACHES

23. A joint technical feasibility study was undertaken by Transport Scotland and FETA during early 2011 to identify the options for the future management and maintenance of the new Forth Crossing and FRB. The assessment considered whether one operator managing both bridges would offer benefits over a strategy where two operators are appointed to two individual contracts. Three options were identified –

- **Option 1:** FETA continues to manage and maintain the FRB and a separate bridge operating company is appointed to manage and maintain the new Forth Crossing following a procurement competition.
- **Option 2:** One bridge operating company is appointed to manage and maintain the new Forth Crossing and FRB following a procurement competition.
- **Option 3:** Responsibility for managing and maintaining the new Forth Crossing is delegated by the Scottish Government to FETA, in addition to their responsibility for the FRB.

24. The options were assessed against the following criteria: the ability to demonstrate and deliver value for money; traffic management and maintenance effectiveness; opportunity to utilise FETA’s land and assets; the protection of FETA employees; the legal implications; and the potential governance arrangements. The key points arising from the assessment of each of the options are detailed in Table 1.

#### Table 1:

<table>
<thead>
<tr>
<th><strong>Option 1</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The FRB and the new Forth Crossing would be managed and maintained separately, therefore, any potential resource and traffic management efficiencies that might be derived from a twin-bridge strategy would be lost.</td>
</tr>
<tr>
<td>FETA would retain responsibility for managing and maintaining the FRB as a public transport corridor. Given the reduction in traffic volumes on the FRB it is likely that FETA would be over resourced and significant job losses would be likely. FETA’s assets would be underutilised.</td>
</tr>
</tbody>
</table>

\(^9\) For information on the Forth Bridges Forum, please see paragraphs 35 to 38
The maintenance of the new Forth Crossing would be subject to a procurement competition thereby allowing value for money to be tested. The winning bidder would be required to provide their own resources and assets unless an agreement could be reached with FETA.

The FETA Board would continue to govern the FRB and the Scottish Government would be responsible for the new Forth Crossing.

**Option 2**

The management and maintenance of both bridges would be subject to competitive tender allowing value for money to be tested fully.

The governance arrangements would mirror those for Scotland’s existing trunk road and motorway network: the Scottish Government will be responsible for the bridges and the roads over them, with the day-to-day operation and maintenance works being carried out by a bridge operating company.

FETA employees would be transferred to the employ of the appointed bridge operating company.

FETA’s land, assets, rights and liabilities would be transferred to the Scottish Government. The land and property required for the management and maintenance of the bridges would be leased to the appointed bridge operating company.

**Option 3**

Statutory responsibility for managing and maintaining the new Forth Crossing may be delegated to FETA by the Scottish Government. A comprehensive redrawing of its functions would first be necessary.

There is a risk that delegating the functions to FETA may be perceived as being uncompetitive as the market has not been tested. Without testing the market, value for money cannot be demonstrated.

FETA’s land and assets would be fully utilised. FETA employees would be given the opportunity to work on a second structure and additional employees would be required. FETA has projected that the twin-bridge strategy would increase headcount from 72 to 92.

The FETA Board would continue to govern the FRB. As the Scottish Government would be responsible for the new Forth Crossing as a trunk road, the governance arrangements would need to reflect the mix of local and national accountability.

25. The Scottish Government concluded that option 2 best supports the Scottish Government’s strategic objective\(^\text{10}\) of making Scotland a wealthier and fairer country, and in particular, the Government’s emphasis on managing public sector spending effectively. The option will -

- Deliver value for money and operational efficiencies through the ‘twin-bridge’ contract, thereby making savings to the public purse;
- Protect all FETA staff, as it intends that the Transfer of Undertakings (Protection of Employment) Regulations apply, meaning there will be no compulsory redundancies as a result of the transfer;

\(^\text{10}\) http://www.scotland.gov.uk/About/Performance/scotPerforms/objectives/wealthierAndFairer
Bring a strategic and collaborative approach to the management and maintenance of the Forth bridges, demonstrating our commitment to public service reform.

CONSULTATION

26. Engagement with targeted stakeholders has been undertaken by Transport Scotland and will continue through the legislative process, into the implementation of the Bill including the dissolution of FETA and the procurement of a bridge operating company.

27. The objectives of the stakeholder engagement undertaken by Transport Scotland for the Forth Road Bridge Bill are –

- To consult with those who will be directly affected by the Bill;
- To develop and maintain positive relationships with stakeholders;
- To ensure that the policy behind the Bill, the Parliamentary process and the steps to implement the Bill are proactively communicated to stakeholders; and
- To assess how the Bill will impact on individuals, communities, organisations and businesses in Scotland.

28. Stakeholders who may be affected by or be interested in the Forth Road Bridge Bill were identified through liaison with Transport Scotland’s Forth Replacement Crossing Team and with FETA.

29. The following stakeholder groups were identified:

- FETA employees
- FETA board
- Trade unions representing FETA employees (Unite, Unison, UCATT)
- Local community groups and residents
- Organisations represented on the Forth Bridges Forum
- Bridge users
- Business and industry
- Members of the Scottish Parliament

30. Transport Scotland recognises that the method and frequency of stakeholder engagement should be tailored to meet the specific needs of the stakeholder and the purpose of the communication. Methods of communicating with key stakeholders about the purpose and content of the Bill have included stakeholder reference group meetings, 1-2-1 meetings and correspondence.
This document relates to the Forth Road Bridge Bill (SP Bill 20) as introduced in the Scottish Parliament on 11 December 2012

FETA

31. The decision to dissolve FETA will affect FETA employees. Stakeholder engagement has focused on ensuring that employees are aware of developments in relation to the dissolution of FETA and that any questions or concerns are addressed in a timely and open manner.

32. Transport Scotland has been working closely with FETA management and will continue to do so as preparations progress for the procurement competition. In addition, Transport Scotland will attend FETA Board Meetings as and when this is suitable to the Board.

33. As a result of early engagement with FETA employees, Transport Scotland agreed to assess the options for the future pension arrangements of the transferring employees. Following further liaison with FETA and with the Lothian Pension Fund, the decision was taken that the Scottish Government will make it a contract requirement, and will provide guarantor status, to ensure that the appointed bridge operating company will be admitted to participate in the Lothian Pension Fund, thereby, allowing employees to continue with their current pension scheme.

Local community groups, residents and businesses

34. Transport Scotland has held a series of stakeholder reference group meetings with local community council representatives, residents and businesses to discuss the provisions of the Bill and the procurement of a bridge operating company. Attendees have raised the importance of effective stakeholder engagement post dissolution of FETA. Transport Scotland will keep these stakeholders informed of progress with the Bill and will hold further reference group meetings following the Bill’s introduction.

Forth Bridges Forum

35. Transport Scotland established the Forth Bridges Forum in November 2011 to ensure that local stakeholders remain at the core of the management and operation of the Forth Bridges. It provides a mechanism for the collective promotion of the FRB, the new Forth Crossing and the Firth of Forth’s rail crossing, the Forth Bridge. Membership includes senior officials from Network Rail, FETA, City of Edinburgh Council, Fife Council, West Lothian Council, Historic Scotland and Visit Scotland. The Forum currently meets quarterly.

36. The functions of the Forth Bridges Forum are:

- To establish and oversee a strategic approach to the operation and maintenance of the Forth Bridges;
- To maintain effective engagement with local communities on issues that may affect, impact or be of interest to them;
- To promote the location of the bridges spanning the Firth of Forth as a unique tourist destination;
- To support the Forth Bridge’s application for World Heritage status; and
- To develop and support schemes and measures to encourage an increase in cross-Forth active and public transport.
37. To date, the Forum has been progressing the promotion of the Forth bridges and preparing the nomination documents for the Forth Bridge’s World Heritage status application. Transport Scotland has provided the Forum members with regular updates on the progress with the Bill and has sought their views on the scope and purpose of the Bill.

38. FETA officials currently undertake stakeholder engagement activity for the Forth Road Bridge. Transport Scotland’s Forth Replacement Crossing Team lead on stakeholder engagement with regard to the construction of the new Forth Crossing including holding regular Community Forums both north and south of the river. Both FETA and the new Forth Crossing Project Team keep the Forum abreast of planned stakeholder engagement activity.

**Plans for engaging with stakeholders post dissolution of FETA**

39. Following the dissolution of FETA, it is intended that the Forum along with the appointed bridge operating company, will play a central role in ensuring that effective communications and stakeholder engagement are maintained.

40. How the Forum will carry out this function will depend on the views of the local communities and residents. To ensure that engagement is fit for purpose, Transport Scotland will seek the views of stakeholders on issues such as the preferred mechanism and frequency of engagement.

41. Transport Scotland will specify within the tender documents the minimum requirements of the bridge operating company in relation to stakeholder engagement. These requirements will be developed in consultation with FETA and other key stakeholders.

42. The bridge operating company shall be required to demonstrate how it plans to engage proactively with the communities adjacent to the bridges and with community groups within the boundaries of the contract and produce a management plan that contains details of the processes and procedures connected with this activity.

43. As with Transport Scotland’s management of the Trunk Road Operating Companies in Scotland, the bridge operating company’s performance will be reviewed regularly and action taken should the bridge operating company fail to meet the contract requirements. Performance is reviewed by the Performance Audit Group (PAG), an independent body appointed by Transport Scotland.

44. Stakeholder engagement will recognise the importance of the structures to the local community and will fulfil requirements set by UNESCO in respect of the Forth Bridge’s application for World Heritage status.

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11 [http://www.transportscotland.gov.uk/road/maintenance/responsibilities/operating-companies](http://www.transportscotland.gov.uk/road/maintenance/responsibilities/operating-companies)
This document relates to the Forth Road Bridge Bill (SP Bill 20) as introduced in the Scottish Parliament on 11 December 2012

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal Opportunities

45. The provisions of this Bill do not discriminate on the basis of gender, race, marital status, religion, disability, age or sexual orientation.

46. When FETA is dissolved, all FETA employees will be transferred to the new Bridge Operating Company. As TUPE will apply, staff will remain on their current terms and conditions at the point of transfer. Transport Scotland is committed to making the transition to the new arrangements as smooth as possible for FETA employees.

47. FETA is bound by the requirements of the Equality Act 2010. Contractually, the bridge operating company will be required to comply with relevant legislation including the Equality Act 2010.

Human Rights

48. The provisions of the Bill will not impact on human rights.

Island Communities

49. The Bill has no effect on Scotland’s island communities.

Local Government

50. The FETA Joint Board, constituted of the constituent local authorities, is to be dissolved meaning that the elected members will be relieved of their responsibilities in relation to the governance of the FRB.

51. 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.

Sustainable Development

52. The Bill will not involve any form of construction or involve any physical change to the Forth Road Bridge or surrounding land.

53. In preparation for the Forth Crossing Act, the legislation that enabled the construction of the replacement road bridge to commence, Transport Scotland undertook a Strategic

Environmental Assessment (SEA) to assess the environmental impacts of the project. An Environmental Statement was also undertaken.

54. Transport Scotland will specify within the tender documents for the bridge operating company, the minimum requirements in relation to environmental responsibility. These requirements will be developed in consultation with FETA and other key stakeholders over the next year and will incorporate all measures currently in place. The bridge operating company will be required to produce a management plan containing details of the processes and procedures connected with this activity.

55. Transport Scotland wrote to the Scottish Government’s SEA Gateway Team to request that the Bill be pre-screened. The SEA Gateway Team subsequently forwarded this request to the Consultation Authorities. There were no objections to Transport Scotland’s request.

56. As a result, Transport Scotland concluded that the Bill will have no or minimal environmental effects under the terms of the Environmental Assessment (Scotland) Act 2005 and that no further SEA is required.

**Business Regulatory Impact Assessment**

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

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This document relates to the Forth Road Bridge Bill (SP Bill 20) as introduced in the Scottish Parliament on 11 December 2012

ANNEX

[Diagram of the Forth Road Bridge area with annotations and a legend explaining the roads included in the bridge operating company contract.]

Notes:
1. DO NOT SCALE. Use figured dimensions only.

LEGEND:
ROADS INCLUDED IN THE BRIDGE OPERATING COMPANY CONTRACT

[Table of revision details, drawing title, and additional information related to the drawing and its approval process.]

FORTH ROAD BRIDGE BILL

ILLUSTRATIVE PLAN OF THE FORTH BRIDGES OPERATING COMPANY (BOC) CONTRACT

Drawing Title: ANNEX

Drawing No.: FRBB.02
Revision: A

Drawing Scale: H.T.S @ A3

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Plot Scale: [Details]
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>
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<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>
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</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.

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\(^3\) [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 made under section 124 and Part III of Schedule 9 of the RTRA. The power to make such an order is to be exercisable 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

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<tr>
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<th>The Scottish Ministers</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order made by Scottish Statutory Instrument</td>
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<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>
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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

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6 http://www.legislation.gov.uk/asp/2010/10/notes/contents
Infrastructure and Capital Investment Committee

1st Report, 2013 (Session 4)

Stage 1 Report on the Forth Road Bridge Bill

Published by the Scottish Parliament on 18 March 2013
Infrastructure and Capital Investment Committee

Remit and membership

Remit:

To consider and report on infrastructure, capital investment, transport, housing, and other matters falling within the responsibility of the Cabinet Secretary for Investment and Cities apart from those covered by the remit of the Local Government and Regeneration Committee.

Membership:

Jim Eadie
Adam Ingram (Deputy Convener)
Alex Johnstone
Gordon MacDonald
Margaret McCulloch
Elaine Murray
Maureen Watt (Convener)

Committee Clerking Team:

Clerk to the Committee
Steve Farrell

Senior Assistant Clerk
Clare O’Neill

Assistant Clerk
Kelly Forbes

Committee Assistant
Myra Leckie
Introduction of the Bill

1. The Forth Road Bridge Bill was introduced by the Cabinet Secretary for Infrastructure, Investment and Cities, Nicola Sturgeon MSP, on 11 December 2012. The Bill was accompanied by a Policy Memorandum, a Delegated Powers Memorandum and a Financial Memorandum. The Bill was referred to the Infrastructure and Capital Investment (ICI) Committee by the Parliamentary Bureau on 18 December 2012. The Committee agreed its approach to Stage 1 consideration at its meeting on 12 December 2012 and issued a call for written evidence on the general principles of the Bill on 20 December 2012.

2. The report of the Subordinate Legislation Committee on the Delegated Powers Memorandum is attached at Annexe A.

3. Five organisations responded to the Committee’s call for evidence and four supplementary written submissions were made. The Committee took oral evidence from witnesses at its meetings of 16 January 2013 and 6, 20 and 27 February 2013. The minutes of these meetings are attached at Annexe B and extracts from the Official Reports of those meetings, together with associated written submissions, and other written evidence, comprise Annexe C. All written and supplementary evidence received is available on the Parliament’s website. The Committee wishes to express its thanks to all those who provided written and oral evidence on the Bill.

Aims of the Bill

4. The primary objective of the Bill is to make provision for the future management and maintenance of the Forth Road Bridge as part of the Scottish Government’s strategy to upgrade the Forth crossing transport network.

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5. The Bill aims to achieve this objective by making provision for the dissolution of the Forth Estuary Transport Authority (FETA), which currently manages and maintains the Forth Road Bridge. The Bill allows for the designation of the Forth Road Bridge as a trunk road, bringing it under the direct responsibility of Scottish Ministers. It allows for the transfer of all FETA assets and liabilities to Scottish Ministers and for the transfer of FETA staff into the employment of a bridge operator to be appointed by Scottish Ministers.

Policy Memorandum

6. The Committee notes the contents of the Bill’s Policy Memorandum and accepts that this document provides an adequate explanation of the policy intentions behind the Bill. It considers that the document provides an appropriate level of detail on the rationale behind the requirement for the provisions and their place as part of a wider managed crossing scheme consisting of the Forth Road Bridge and the new Forth Crossing.

Report by the Subordinate Legislation Committee

7. The Committee notes the report of the Subordinate Legislation Committee, which confirms that that Committee considered and is content with the delegated powers provisions proposed in the Bill.

Financial Memorandum

8. The Committee notes that the Finance Committee issued a call for evidence on the Bill’s Financial Memorandum on 9 January 2013. Three responses were received: from FETA, the City of Edinburgh Council and Lothian Pensions Fund.

9. The Committee further notes that, on receipt of these responses, the Finance Committee agreed that it would not take any oral evidence in connection with the Financial Memorandum or carry out any further scrutiny of it. The Finance Committee has therefore not produced a report. The Convener of the Finance Committee agreed that a copy of the responses it received should be forwarded to the ICI Committee for consideration and they can be viewed on the Finance Committee’s web pages.

10. The issue raised in the submission to the Finance Committee from the City of Edinburgh Council on potential compensation liabilities following the dissolution of FETA is addressed at paragraphs 50-58 of this report.

Consultation

11. In terms of the consultation carried out by the Scottish Government in relation to the Bill proposals, the Policy Memorandum states that—

   “Engagement with targeted stakeholders has been undertaken by Transport Scotland and will continue through the legislative process, into the

implementation of the Bill including the dissolution of FETA and the procurement of a bridge operating company.”

12. Transport Scotland officials asserted in evidence that taking a targeted approach to consultation involving only those organisations and community groups who had a direct or local interest in the management and maintenance of the Forth Road Bridge was deemed to be more appropriate than a wider public consultation, stating that—

“The bill’s provisions are tightly defined and technical rather than broad and conceptual....Transport Scotland takes the view that continuous consultation with targeted stakeholders throughout the project - from policy development through the legislative process to the implementation of the policy during the dissolution of FETA - is more appropriate and inclusive than a one-off written exercise.”

13. The Committee notes from written evidence submitted by UCATT that the trade union was not made aware of Transport Scotland’s process of limited engagement with particular stakeholders and was therefore unable to participate in that process.

14. The Committee acknowledges the obvious value in close and continuous dialogue with stakeholders directly affected by a legislative proposal. However, notwithstanding the view taken by Transport Scotland that the Bill was narrowly defined and technical in nature, the Committee considers it unfortunate that the opportunity was not taken to conduct a wider public consultation on the proposed provisions.

15. The Committee was of the view that the fact that UCATT, a trade union with a clear interest in the Bill proposals given the staffing issues involved, did not have the opportunity to participate on the limited consultation carried out by Transport Scotland, highlighted the potential risk involved in carrying out a more limited consultation.

16. The Committee notes that its predecessor committee in Session 3, the Transport, Infrastructure and Climate Change Committee, raised similar concerns in relation to the Scottish Government’s failure to carry out a public consultation on the Abolition of Bridge Tolls (Scotland) Bill, stating that—

“Whilst there is no formal requirement for such consultation, it [the Committee] considers that obtaining the views of the public on issues where there is a clear and obvious public interest constitutes good practice in the legislative process.”

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17. The Committee echoes these sentiments and calls on the Scottish Government to reflect on its approach to consultation in relation to future legislative proposals.

Management and maintenance of the Forth Road Bridge

18. The Scottish Government is of the view that contracting a single bridge operating company to manage and maintain the new Forth Crossing, the Forth Road Bridge, together with connecting roads in the vicinity of the two crossings, will deliver cost and operational efficiencies. The Scottish Government views this as the principal objective of the Bill.

19. In order to allow this objective to be achieved, the Policy Memorandum states that it is necessary for the Scottish Government to take over the current management and maintenance responsibilities and functions from FETA. The Bill provides for this transfer of responsibilities and for the dissolution of FETA.

20. In giving evidence to the Committee, the Minister for Transport and Veterans explained why alternative approaches to having a single operating company had been discounted—

“In looking at what we propose, it is worth considering what the alternatives were. One option would have been to have two separate bridge operators. Our view is that in all likelihood that would have meant redundancy or at least uncertainty for Forth Estuary Transport Authority staff. It was also judged to be uneconomic—potential operating savings of £6 million on a five-year contract cannot readily be ignored.”

21. There was strong support in written evidence for the intention to appoint a single body to manage and maintain both crossings. For example, Fife Council stated that—

“We are satisfied this way forward gives best value for money and is able to be more versatile in maintenance procedures and operationally easier to co-ordinate the operations of the two bridges....”

22. The City of Edinburgh Council also highlighted the wider benefits of such an approach—

“A coordinated approach, which places both bridges under the management of a single party, will provide benefits for both strategic planning and the ongoing operation and control of the bridges, including responses to incidents or any emergency works that might be required.”

23. Although FETA acknowledged that it would not have the opportunity to manage the two crossings, it nevertheless indicated that it was “pleased that the principle of a single body having responsibility for both bridges has been included

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7 Fife Council. Written evidence, paragraph 4
8 City of Edinburgh Council. Written evidence, paragraph 4
in the Bill and that the expertise of the FETA staff, and the resources of the Authority at South Queensferry, will be fully utilised.\(^9\)

24. The Committee notes that in Session 3, the Transport, Infrastructure and Climate Change Committee suggested in its report on the general principles of the Forth Crossing Bill that “it may be beneficial for one body to manage both crossings”.\(^10\)

25. **The Committee is satisfied that contracting a single bridge operating company is the most appropriate and cost-effective approach to the management and maintenance of the Forth Road Bridge and the new Forth Crossing.** It is reassured that the valuable expertise and experience of FETA staff will be available to the new operator which will ensure that there is a strong element of continuity.

*Management and maintenance options considered by the Scottish Government*

26. The Committee notes that the Policy Memorandum provides details of the joint study carried out by Transport Scotland and FETA early in 2011. The study sought to identify possible options for the future management of the Forth Road Bridge and Forth Replacement Crossing and identified the following three options:

- **Option 1:** FETA continues to manage and maintain the Forth Road Bridge while the Scottish Government appoints a separate company to manage and maintain the Forth Replacement Crossing;
- **Option 2:** A single company is appointed to manage and maintain the Forth Replacement Crossing and the Forth Road Bridge; and
- **Option 3:** Responsibility for managing and maintaining the new Forth Replacement Crossing is delegated by the Scottish Government to FETA, in addition to their responsibility for the Forth Road Bridge.

27. The Policy Memorandum explains that Scottish Ministers chose Option 2 and for the following reasons—

> “The Scottish Government concluded that option 2 best supports the Scottish Government’s strategic objective of making Scotland a wealthier and fairer country, and in particular, the Government’s emphasis on managing public sector spending effectively.”\(^11\)

28. The Final Business and Regulatory Impact Assessment of the proposals in the Bill indicates that the costs associated with Option 3 had not been assessed as the Scottish Government had reached the view that FETA could not participate in a procurement competition. The reason for this view is explained as follows—

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9 FETA. Written evidence, paragraph 4
11 Policy memorandum, paragraph 25
“If FETA use state funding to finance a tender bid (as they are fully funded by the Scottish Government) then this would very likely constitute State Aid”. Obviously, this situation would only arise if FETA were required to take part in a competitive tendering exercise.”

29. In providing evidence to the Committee, the Minister for Transport and Veterans explained the Scottish Government's position with regard to the potential risk of falling foul of State Aid rules—

“It is a question of considering the likelihood of a challenge from the European Commission...The risks of awarding a contract to an organisation that, for reasons to do with its formation, has not been able to demonstrate value for money in the way in which we need it to would simply have been too much for us.”\(^{12}\)

30. In written evidence to the Committee, FETA indicated that, although it would have preferred to retain responsibility for the Forth Road Bridge and be delegated responsibility for the Forth Replacement Crossing, it accepted that this option would not be pursued—

“FETA has accepted that the change will happen and we have been working closely with Transport Scotland to try to get the best outcome for the future maintenance and operation of the two bridges and the adjacent road network, because that is what is important.”\(^{13}\)

31. However, the Committee was keen to establish a clearer picture as to why the Scottish Government had reached the view that FETA should not be able to bid for the contract to manage both the Forth Road Bridge and the new crossing.

32. Whilst Committee members understood the Scottish Government's position and reasoning behind its decision not to proceed with Option 3, they noted that, in the absence of any assessment of this option, there was no information available on its potential cost-effectiveness. Transport Scotland responded specifically to this point in supplementary written evidence, stating that—

“FETA was unable to demonstrate Value For Money (VFM) of its existing operation of the Forth Road Bridge; and there was no mechanism to extrapolate how FETA would achieve VFM in a twin Bridge management strategy...Ministers chose not to cost Option 3 due to the lack of an effective mechanism to assess VFM.”\(^{14}\)

33. When questioned on how the Scottish Government could be confident that, in the absence of assessment of Option 3, the proposals in the Bill offered the best value for money, Transport Scotland officials stated that—


\(^{13}\) Scottish Parliament Infrastructure and Capital Investment Committee, *Official Report*, 20 February 2013, Col 1335

\(^{14}\) Scottish Government Bill Team. Supplementary written evidence, Paragraph 5
“The result of the procurement competition will offer that certainty, because the competitor whose bid wins based on quality and price will be awarded the contract. Therefore, we will be able to prove that we are getting the most cost-effective bid.”

34. The Committee considers it unfortunate that FETA, with its valuable and extensive expertise and experience in managing and maintaining the Forth Road Bridge, was not able to be considered for the role of carrying out these operations for both crossings. The Committee further considers it unfortunate that there was no mechanism for an assessment to be made of how Option 3 compared with the other options in terms of cost-effectiveness.

35. However, the Committee notes the assessment made by the Scottish Government that there was a very real risk that it could be found to be in contravention of EU State Aid rules if FETA was to participate in a tendering exercise backed by Scottish Government funding. The Committee understands and acknowledges the significance of this risk and therefore accepts the Scottish Government’s judgement in this matter.

Duration of management and maintenance contract

36. The Committee sought to obtain the views of witnesses on what the most appropriate duration would be for the new management and maintenance contract. Transport Scotland officials indicated in oral evidence to the Committee that—

“…our typical maintenance contract will have a five-year duration with a series of add-ons at the end—perhaps two plus two plus one, which takes it to somewhere around 10 years.”

37. However, FETA indicated in written evidence that it had a 15 year planning cycle for major maintenance and works programmes and suggested that a minimum contract length should therefore be set at 10 years. Reasoning to support this view was that—

“The majority of capital projects are years in the planning and have to be carefully scheduled and prioritised in order to minimise the impact on traffic, manage interdependencies and make best use of resources. Therefore, any contract awarded for the maintenance and operation of these major bridges should be of a duration that encourages the operator to take a similar long term view.”

38. Responding to the suggestion that a longer contract would perhaps be more appropriate, the Minister for Transport and Veterans provided further details as to

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17 FETA. Written evidence, paragraph 11
why the Scottish Government’s preference was for a shorter, five-year contract duration with potential for extensions—

“The normal reason for having a longer contract is to allow bidders to invest over a longer period and get a return on their investment, but that does not apply to the same extent in this case. Five years seems to be a good length for the contract, but we reserve the option to extend it, which could occur for a number of reasons. We have done that with the trunk roads contracts that we have already let. The best outcome is for the contract to run for five years and for us to give ourselves the option of extending it if we want to.”

39. Whilst the Committee notes the differing views expressed on this matter, it does not have a firm view on the optimum contract length. However, the Committee recommends that the Scottish Government should provide further information on how its proposal to let a management and maintenance contract for five years plus extensions would fit with longer term planned maintenance programmes of the type currently operated by FETA, which could cover periods of up to 15 years.

Development of draft contract

40. The Committee sought views from those giving evidence on how the contract for the management of the Forth Road Bridge and the new Forth crossing should be framed. Transport Scotland officials stated that—

“The contract will be based on the existing fourth generation contract, which is for the current maintenance and operation of the trunk road network...we will base the Forth replacement crossing part of the document on information that is provided by the Forth Crossing Bridge Constructors and the Forth Road Bridge section will be based on information that is supplied by FETA staff.”

41. The Minister for Transport and Veterans advised the Committee that it was his aim to ensure that the contract delivered high service standards—

“My stated requirement is for the new operating contract to meet, if not surpass, existing levels of service. The contractual commitments currently being developed will provide for that.”

42. The Committee received written evidence from both the UCATT and UNITE trade unions which commented on the approach they would like to see taken by Transport Scotland in procuring the contract. For example, UCATT stated—

“UCATT is also concerned that the private company seeking to deliver the contract, should not be any company that has been found to engage in the
insidious practice of blacklisting, of which some roads companies have had involvement. This should be clearly set out in the procurement document. By the same token, no company that operates aggressive, immoral tax avoidance schemes, through payroll companies or other methods, should be considered for this contract.”

43. When asked for an assurance that appropriate steps would be taken during the contract procurement process to ensure that the contract would not be awarded to a company which had been found to have engaged in employee blacklisting, the Minister for Transport and Veterans said—

“As you would expect, the Scottish Government deplores such behaviour… The contract will guarantee that workers will have the right to join or form trade unions of their own choosing and to bargain collectively. The employer will be required to adopt an open attitude towards trade unions, and the contract will require that workers’ representatives are not discriminated against. Given that those issues have been the source of the blacklisting allegations, the contract will ensure that such practices do not happen.”

44. In addition, Transport Scotland officials advised the Committee that efforts would be made as part of the procurement process to ensure that companies who had engaged in tax-avoidance would not be permitted to participate—

“The contract will take the stance that companies that have not fulfilled their tax obligations may be barred from competing, but we will take advice from the Scottish Government legal department and from whichever policies are in place at the time.”

45. The Committee was also keen to establish how the procurement process might take into account requirements to provide for a community value element or to create vocational or professional apprenticeships and job opportunities for long-term unemployed people. Transport Scotland officials confirmed that minimum standards would be written into the contract to deliver on these objectives. Officials also highlighted good practice in this regard on projects such as the recently completed M74 construction and the new Forth crossing.

46. The Committee notes the evidence provided in this context and is reassured that the contract development process is being taken forward in an appropriate manner with a clear aim of delivering high standards of good practice. The Committee requests that the Scottish Government keeps it updated on progress towards developing and letting the contract and, in particular, on how its terms incorporate good practice in relation to employment standards and opportunities.

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21 UCATT. Written evidence, paragraph 8
22 Scottish Parliament Infrastructure and Capital Investment Committee, Official Report, 27 February 2013, Col 1435
Designation of the Forth Road Bridge as a trunk road

47. The Bill also provides for the trunking of the road over the Forth Road Bridge, with the effect that the Scottish Government becomes the roads authority.

48. Both Fife Council and the City of Edinburgh Council supported this provision in written evidence, agreeing that the road should form part of the strategic trunk road network.

49. The Committee notes that trunking the road is essential if the key objectives of the Bill are to be realised.

Transfer of property and liabilities etc.

50. The Bill proposes the transfer of the ownership of FETA assets to Scottish Ministers. Scottish Government officials confirmed that no fixed assets, such as land or property, would be transferred to the private sector bridge operator.\(^{25}\)

51. The Bill also provides for all liabilities of FETA to be transferred to Scottish Ministers. This is clearly stated on the face of the Bill at section 2. However, in evidence to the Committee, the City of Edinburgh Council raised concerns in relation to what it perceived to be the potential for that authority to become liable for up to £4.4m of legacy compensation costs.

52. These concerns related specifically to work undertaken to develop the M9 Spur, linking the Forth Road Bridge with the M9 motorway, which replaced the A8000 as the main link between the southern end of the Forth Road Bridge and the motorway network. The M9 spur opened in October 2007. A section of the A90 was also upgraded as part of this project. The project was delivered by FETA, with the City of Edinburgh Council acting as their agent. FETA had reimbursed the Council for all costs related to the project which had arisen to date.

53. Representatives of the Council stated in oral evidence that it was felt that the issues which had given rise to the authority’s concerns had been overlooked during the preparation of the Bill—

“In drafting the bill, Transport Scotland considered FETA’s liabilities, but the City of Edinburgh Council’s liabilities were not totally transparent. Before the submission by the council and subsequent conversations with Transport Scotland, Transport Scotland was unaware that the council used its powers to acquire land.”\(^{26}\)

54. In examining these concerns, the Committee sought to establish the level of compensation liability which, in the Council’s estimation, it might incur in relation to the M9 spur project. In evidence, Council representatives stated—


“On the figures that are in the public domain, the best estimate of the likely level of compensation is £93,000. However, there are 180 claims from former landowners on the table, with a combined sum of £4.4 million. Those could end up being resolved through arbitration by the Lands Tribunal for Scotland, so there is no certainty about the outcome. We believe that it is not likely that the figure of £4.4 million will come to pass, but it is perfectly possible that the figure could be higher than £93,000.”

55. The FETA representative provided a view on the nature and scale of any potential liabilities arising from the project—

“I can only say what FETA has budgeted for, regarding the liability for the M9 spur…FETA is liable for any outstanding costs that arise from the scheme. We have budgeted for liabilities of £623,000, which is in our accounts. I cannot comment on any figure other than that. Of that £623,000, about £190,000 is for liabilities for potential claims and the rest is for fees.”

56. Representatives of the Council indicated that they would like a statement to confirm that all liabilities associated with the construction of the M9 link road would pass to Scottish Ministers. They acknowledged that discussion with Transport Scotland had been constructive once this issue had been highlighted—

“The issue is about the council safeguarding its position. The relationship between FETA and the council has been absolutely fine, and all the council’s expenditure thus far has been covered by FETA. However, with FETA being dissolved, we obviously want to ensure that the liabilities are properly taken account of.”

57. When asked by Committee members for clarity of the position in relation to M9 spur project liabilities, the Minister for Transport and Veterans stated—

“The bill itself provides for us to take on all FETA’s obligations. FETA has a legal agreement with City of Edinburgh Council whereby it pays for any compensation claims, and some of the claims—the second half—are not due in until September this year. I do not know what else is required to formalise the position. We have said that we will take on the obligations and we have made that plain to the council.”

58. The Committee notes and accepts the very clear statement made by the Minister which confirms that the Scottish Government will take responsibility for meeting all of FETA’s obligations, including any liabilities which may arise in relation to the M9 spur. However, the Committee considers that it would be helpful if there was a formal communication...
between the Scottish Government and the City of Edinburgh Council to confirm that there will be no liability on the Council. The Committee recommends that this formal communication should be issued to the Council before the Bill completes its parliamentary passage.

Transfer of staff

59. The Committee considers the arrangements for the transfer of staff from FETA to a new contractor to be of significant importance and acknowledges the understandable uncertainty and concern that such a process of major change can bring. The Committee therefore considered it essential that it received assurances that appropriate arrangements would be put in place to ensure that the conditions of employment, pay and pensions of FETA staff would not be adversely affected following the transfer of their employment to a private sector bridge operator.

60. The Committee was therefore encouraged to receive confirmation from Transport Scotland officials that, although pension provision was not protected under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), arrangements had been made for the continuation of the existing pension arrangements for FETA staff—

"We…discussed the matter with the Lothian Pensions Fund and decided that the best option for the staff was to have their pensions stay where they are. That is why we will write it into the contract that the successful bridge contractor will apply for admitted body status. Essentially, that means that the staff’s pensions will remain unaffected and that they will stay with the same terms and length of service. Therefore, their pensions are, in effect, untouched."31

61. The Committee notes that this arrangement will be restricted to existing FETA staff transferring to the new bridge operator. Any new staff employed by the would not be admitted to the Lothian Pensions Fund. It further notes that Transport Scotland intends to ensure a continuation of this protection under any subsequent contracts in future years.

62. FETA informed the Committee that it had held detailed discussions with Transport Scotland on the pensions issue and was content with the arrangement reached. The UCATT trade union also noted this favourable outcome.

63. The Committee is reassured that significant efforts have been made to maintain the terms and conditions of FETA staff transferring to the new bridge operator. It commends Transport Scotland for its work to ensure a satisfactory outcome on pension arrangements. The Committee calls on Transport Scotland to continue to offer staff maximum support and to work closely with bodies representing staff interests during the transition period and beyond.

Local accountability

64. The Committee notes that the Scottish Government had established the Forth Bridges Forum to help manage operational and maintenance issues which emerged in relation to the Forth crossings, to promote the crossings and to maintain effective engagement with local communities. It also notes that Transport Scotland would ensure that the terms of the bridge operator contract would include a duty to consult local people and to hold regular engagement meetings.

65. However, in both written and oral evidence, the City of Edinburgh Council expressed concerns that the dissolution of FETA would significantly reduce the level of influence which locally elected councillors might have on decisions relating to the operation of the Forth bridges. The Council acknowledges the establishment of the Forth Bridges Forum, but is concerned that its membership will only involve local authority officers with no direct input into its work from local elected members.

66. Representatives from the Council suggested that councillors from both Fife Council and the City of Edinburgh Council should sit on the Forum. The Council did not state a clear preference as to whether these should be transport conveners from the affected local authority areas, or councillors with transport responsibilities, or possibly ward members from the affected community areas in order to enable community concerns to be raised directly.  

67. In evidence to the Committee, the Minister for Transport and Veterans made clear that he was not in favour of the proposal that local authority councillors should sit on the Forum, on the basis that the operating contract would be wholly the responsibility of Scottish Ministers. He stated—

“FETA was a completely different body from the forum that has been established. Transport Scotland and the Government will stand behind the contract, so there will be democratic accountability. We should not complicate that further by putting in elected representatives who would not be responsible for the spending decisions.”

68. The Committee acknowledges the concerns of the City of Edinburgh Council in this matter. However, it also notes that it has received no similar representations from the other local authorities who sit on the FETA board. The Minister has set out clearly the Scottish Government’s view that local authority councillors should not be involved in matters pertaining to the operation of the new contract for which they would have no formal accountability.

69. The Committee agrees with the Scottish Government’s view that it would not be appropriate for the membership of the Forth Bridges Forum to include elected local authority representatives. It considers that the
inclusion of local authority officials allows for an appropriate level of input from and engagement by the local councils in the work of the Forum. It therefore does not intend to recommend any changes to its current membership.

Sustainable and active travel

70. The Committee is aware that FETA’s remit is broader than simply managing and maintaining the Forth Road Bridge. It can, for example, also undertake work to improve cross-Forth travel and reduce bridge congestion. The Committee was keen to establish what, if any, impact the proposals in the Bill might have on users of the Forth Road Bridge, particularly pedestrians, cyclists and those using buses, given the Bridge’s future use as a public and active travel corridor.

71. Transport Scotland officials confirmed that users would see no change as a result of the Bill, as the new operator would carry out the same functions as FETA carries out at present. Following the opening of the new crossing, the Forth Road Bridge would be used exclusively by buses, taxis, cyclists and pedestrians.

72. More specifically, the Committee sought an assurance that the current arrangements for transporting pedestrians and cyclists across the Forth Road Bridge when weather conditions prevent them from walking or cycling across the bridge would be continued by any new bridge operator. In response, Transport Scotland officials confirmed that the current arrangements would be replicated as a condition in the new operation and maintenance contract. The Committee welcomes this commitment.

Suicide prevention services

73. The Committee notes that there are services in place under the current management arrangements to respond to attempted suicides from the Forth Road Bridge. Following questioning by Committee members, Transport Scotland agreed to submit supplementary written evidence to provide further details on the proposed approach to be taken under the new management arrangements. This written evidence subsequently confirmed that the existing services would continue following the transition to management by a private contractor. It stated that Transport Scotland would—

“...stipulate within the Forth Bridge Operating Company Contract requirements to which the company must adhere to reduce and/or prevent instances of attempted suicide at these locations. This will involve applying the NHS Health Scotland Guidance, FETA’s experience, and Transport Scotland’s own experience from elsewhere in Scotland.”

74. The Committee is reassured that these important services which deal with difficult and sensitive issues will continue under the proposed new management arrangements.

35 Transport Scotland. Supplementary written evidence, paragraph 4
Current maintenance issues

75. The Committee notes the announcement on 25 February 2013 of the outcome of the FETA investigation into the condition of the Forth Road Bridge main cables following a period of dehumidification. The investigation found that the strength of the cables had not materially diminished since 2008 and that the cables were not expected to lose significantly more strength in future as long as the newly installed dehumidification system continued to function effectively.

76. The Committee also notes that a report into the condition of the main Forth Road Bridge cable anchorages was due to be produced in April 2013, and that media reports had suggested that this might also deliver a positive outcome.

77. The Committee considers it to be helpful that clarity on these major maintenance issues will be available as the process of tendering for the new operation and maintenance contract moves forward.

Engagement with other bridge operators

78. FETA indicated in both written and oral evidence that it is an active member of associations and bridge groups in Scotland, the UK and internationally. It highlighted the benefits of these memberships, stating that—

“These associations have proven to be crucial during the inspections and major retrofitting works carried out on the bridge not least in the work done on the main cables. FETA would like to see that these associations are continued within the proposed new management arrangements.”

36

79. When asked whether the new contractor would be required to continue membership of such groups, the Minister indicated that—

“There could well be some added value in maintaining contact with the operators of similar bridges, and one option might be for membership to pass to Transport Scotland rather than to the Forth Bridge operating company. I have asked officials to consider that issue further in consultation with FETA...”

37

80. The Committee considers that the continued exchange of information, advice and expertise with other bridge operators around the world can only be beneficial. It welcomes the commitment given by the Minister to consider further how contact with other bridge operators might be maintained under the new management arrangements provided for by the Bill.

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36 FETA. Written evidence, paragraph 10
37 Scottish Parliament Infrastructure and Capital Investment Committee, Official Report, 27 February 2013, Col 1435
Equal opportunities

81. The Committee notes the statement in the Policy Memorandum that the provisions of the Bill do not discriminate on the basis of gender, race, marital status, religion, disability, age or sexual orientation.

Conclusion

82. The Committee recognises the importance of this Bill as a key component in progress towards meeting the Scottish Government’s objective of delivering a co-ordinated, managed Forth crossing strategy. The Committee considers that the provisions contained within the Bill are sufficient to allow its objectives to be met.

83. The Infrastructure and Capital Investment Committee therefore recommends to the Parliament that the general principles of the Forth Road Bridge Bill be agreed to.
INTRODUCTION

1. At its meeting on 22 January 2013, the Subordinate Legislation Committee considered the delegated powers provisions in the Forth Road Bridge Bill (“the Bill”) at Stage 1. The Committee submits this report to the Infrastructure and Capital Investment Committee as lead committee for the Bill under Rule 9.6.2 of Standing Orders.

OVERVIEW OF THE BILL

2. The Forth Road Bridge Bill\(^1\) is a Scottish Government Bill which was introduced to Parliament on 11 December 2013.

3. The Bill forms part of the Scottish Government’s strategy to upgrade the Forth crossing network. The primary function of this Bill is to dissolve the Forth Estuary Transport Authority (“FETA”), the public authority currently responsible for the management and oversight of the Forth Road Bridge. The Bill transfers all of FETA’s property, rights and liabilities to the Scottish Ministers. Staff who are currently employed by FETA are to be transferred to a new “bridge operator”, a person to be appointed by the Scottish Government to manage and maintain the Forth Road Bridge. The Bill also provides that the roads leading up to, across and leaving the Forth Road Bridge for which FETA are currently the roads authority will become trunk roads, making the Scottish Government the roads authority responsible for their maintenance and oversight.

4. The Scottish Government has provided a Delegated Powers Memorandum (“DPM”)\(^2\) setting out the need for the delegated powers, how they may be exercised and the choice of procedure applicable to their exercise.

DELEGATED POWERS PROVISIONS

5. The Committee considered each of the delegated powers in the Bill.

Section 5 – Byelaws
Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: No procedure and not laid before the Parliament.

6. The Forth Estuary and Transport Authority Order 2002 (“the 2002 Order”) enables FETA to make byelaws in respect of the Forth Road Bridge. Such byelaws are made and varied by FETA following the same procedures used by local authorities prescribed by section 202 of the Local Government (Scotland) Act 1973. Under the 2002 Order byelaws may be made by FETA to, amongst other things, prevent injury or damage to the bridge, regulate the conduct of persons using the bridge and to prohibit certain classes of vehicle from using the bridge.
7. This section of the Bill preserves any byelaws made by FETA under the 2002 Order once the 2002 Order is revoked and FETA abolished. References to “the Authority” (FETA) made in any such byelaws are to be read as references to the Scottish Ministers. The section also extends the power of the Scottish Ministers to make traffic regulation orders under section 1 of the Road Traffic Regulation Act 1984 (c.27) (“RTRA“) to include a power to revoke any byelaw which continues to have effect by virtue of this section.

8. In the DPM the Scottish Government explains that relevant provision to replace some of the matters regulated by the byelaws will be made by Scottish Ministers using their existing powers under section 1 of the RTRA. It is suggested that once such provision has been made, the byelaws which have been saved by this section will no longer be required to remain in force.

9. The Committee is content with the power in section 5 which would allow the Scottish Ministers to revoke byelaws made by the Forth Estuary Transport Authority under the Forth Estuary Transport Authority Order 2002 by extending their existing power to make traffic regulation orders under section 1 of the RTRA and for such orders not to require to be laid before the Parliament nor to be subject to any parliamentary procedure in terms of section 30(4) of the Interpretation and Legislative Reform (Scotland) Act 2010.

Section 7 – Commencement  
Power conferred on: The Scottish Ministers  
Power exercisable by: Order  
Parliamentary procedure: Laid only

10. This section allows the Scottish Ministers to appoint a day on which the provisions in the Bill (other than sections 6, 7 and 8 which will come into force on the day after Royal Assent) come into force.

11. Orders made under this power only require to be laid before the Parliament. There is no further form of Parliamentary control over the Order.

12. The Committee is content with the power in section 7 which would allow the Scottish Ministers to commence the provisions in the Bill (except for sections 6, 7 and 8, which will come into force the day after Royal Assent) and for that power to be subject to the default laying requirement in section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.
ANNEXE B: EXTRACTS FROM MINUTES OF THE INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

1st Meeting, 2013 (Session 4), Wednesday 16 January 2013

**Forth Road Bridge Bill**: The Committee took evidence on the Bill at Stage 1 from—
Raymond Convill, Bill Team Officer, and Graham Porteous, Head of Special Projects, Transport Scotland.

3rd Meeting, 2013 (Session 4), Wednesday 6 February 2013

**Forth Road Bridge Bill**: The Committee took evidence on the Bill at Stage 1 from—
Barry Colford, Chief Engineer and Bridgemaster, Forth Estuary Transport Authority.

4th Meeting, 2013 (Session 4), Wednesday 20 February 2013

**Forth Road Bridge Bill**: The Committee took evidence on the Bill at Stage 1 from—
Councillor Lesley Hinds, Transport Convener, and Ewan Kennedy, Transport Policy and Planning Manager, City of Edinburgh Council.

**Forth Road Bridge Bill (in private)**: The Committee considered the evidence heard earlier in the meeting.

5th Meeting, 2013 (Session 4), Wednesday 27 February 2013

**Forth Road Bridge Bill**: The Committee took evidence on the Bill at Stage 1 from—
Keith Brown, Minister for Transport and Veterans, Susan Conroy, Principal Legal Officer, and Graham Porteous, Head of Special Projects, Transport Scotland, Scottish Government.

**Forth Road Bridge Bill (in private)**: The Committee considered the evidence heard earlier in the meeting.
ANNEXE C: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

1st Meeting, 2013 (Session 4), 16 January 2013

ORAL EVIDENCE ...........................................................................................................................

Raymond Convill, Bill Team Officer, and Graham Porteous, Head of Special Projects, Transport Scotland

SUPPLEMENTARY WRITTEN EVIDENCE .........................................................

Scottish Government Bill Team
Transport Scotland

3rd Meeting, 2013 (Session 4), 6 February 2013

ORAL EVIDENCE ...........................................................................................................................

Barry Colford, Chief Engineer and Bridgemaster, Forth Estuary Transport Authority

4th Meeting, 2013 (Session 4), 20 February 2013

ORAL EVIDENCE ...........................................................................................................................

Councillor Lesley Hinds, Transport Convener, and Ewan Kennedy, Transport Policy and Planning Manager, City of Edinburgh Council

SUPPLEMENTARY WRITTEN EVIDENCE .........................................................

City of Edinburgh Council

5th Meeting, 2013 (Session 4), 27 February 2013

ORAL EVIDENCE ...........................................................................................................................

Keith Brown, Minister for Transport and Veterans, Susan Conroy, Principal Legal Officer, and Graham Porteous, Head of Special Projects, Transport Scotland, Scottish Government
LIST OF OTHER WRITTEN EVIDENCE

SUBMISSIONS RECEIVED IN RESPONSE TO CALL FOR VIEWS

- FETA
- Fife Council
- The City of Edinburgh Council
- UCATT
- Unite

SUPPLEMENTARY WRITTEN SUBMISSIONS

- The City of Edinburgh Council
11:05

On resuming—

Forth Road Bridge Bill: Stage 1

The Convener: The third item of business is our first evidence session on the Forth Road Bridge Bill. We are going to hear from the Scottish Government’s bill team. The aim is for the committee to seek clarification on the bill’s provisions and associated documents. I welcome the bill team, who are David Thomson, bill officer; Raymond Convill, bill team leader; Graham Porteous, head of special projects; and Susan Conroy, principal legal officer. I invite one of you to make some opening remarks.

Graham Porteous (Transport Scotland): Thank you for inviting us. I am head of special projects at Transport Scotland. Raymond Convill is the bill team leader, David Thomson is a supporting officer and Susan Conroy is a principal legal officer with the Scottish Government.

The Forth Road Bridge Bill was introduced on 11 December 2012, and supporting information was also published on that date, notably the policy memorandum, the explanatory notes, the financial memorandum and the delegated powers memorandum. A business and regulatory impact assessment and an equalities impact assessment have also been published. A full strategic environmental assessment was undertaken for the Forth crossing. As the bill will have a negligible impact on the local environment, we have not done an environmental assessment for that part of the bill. Transport Scotland will, however, specify in the contract documents the minimum requirements on the bridge operating company in relation to environmental responsibilities.

The bill is relatively short, and is in some ways technical, dealing as it does with trunking, maintenance, the organisational status of the Forth Estuary Transport Authority and the Transfer of Undertakings (Protection of Employment) Regulations. I can assure the committee, though, that ministers, the Scottish Government and Transport Scotland fully appreciate the impact that the changes will have on the lives of the FETA staff, who are drawn from the local communities and who work on the Forth road bridge, particularly as many of them have long years of service there. Any changes in respect of an employer, career progression and pension rights are very real and should not be underestimated.

The principal aim of the bill is to enable the most cost-effective and co-ordinated approach to the management and maintenance of the Forth replacement crossing and the Forth road bridge. The Scottish ministers believe that having a single contractor carrying out the management and
maintenance of the two bridges and the adjacent connecting trunk roads will achieve cost efficiencies, and that holding a procurement competition is the only way to truly test the market to prove value for money.

The bill’s provisions will trunk the road over the Forth road bridge, transfer FETA’s assets and liabilities to the Scottish Government and dissolve FETA and transfer its employees to the new bridge operating company. In line with ministerial objectives from the outset, the bill paves the way for the procurement process to take place. It will protect all the FETA staff and retain their skills, knowledge and professionalism, as they are all greatly valued by the Scottish Government. As with the wider Scottish Government approach, there will be no redundancies. Subject to parliamentary approval, the bill’s commencement provides for the simultaneous dissolution of FETA and transfer of its employees.

To allow the management and maintenance arrangements to bed in and so that the new bridge operating company can become familiar with the Forth replacement crossing, commencement of the new bridge operating contract will be in advance of the opening of the new Forth replacement crossing.

I hope that those opening remarks are helpful. If the committee needs any other information, we will try to provide it.

Adam Ingram: Mr Porteous, you touched on some of the bill’s provisions, but can you outline what the key provisions are and why they are necessary?

Graham Porteous: The first key provision is to trunk the road over the Forth road bridge so that responsibility for it becomes the Scottish ministers’ as roads authority. The second provision is to ensure that all the assets that FETA currently owns, such as land, buildings and vehicles, transfer from FETA to Transport Scotland. That results in the bill’s third provision, which is dissolving FETA. There are also delegated powers that are transferred to us on bylaws and the transfer of the FETA employees.

Adam Ingram: I presume that the provisions are necessary because we need to co-ordinate between the new crossing and the Forth road bridge.

Graham Porteous: Yes. A maintenance company has to be in place to maintain the Forth replacement crossing. There will be a new bit of road and new sections of motorway at either side. In order to pave the way to get a procurement competition, we must trunk the road to take responsibility for it.

Adam Ingram: Perhaps there will be questions about that a wee bit later.

What consultation has Transport Scotland carried out on the proposals? Why has there been no formal public consultation exercise?

Graham Porteous: The bill’s provisions are tightly defined and technical rather than broad and conceptual but, as I mentioned, they affect individuals, which is important. Transport Scotland takes the view that continuous consultation with targeted stakeholders throughout the project—from policy development through the legislative process to the implementation of the policy during the dissolution of FETA—is more appropriate and inclusive than a one-off written exercise.

As the bill affects specific groups, the method and frequency of stakeholder engagement have been tailored to meet the specific needs of individual stakeholders. That was the purpose of our communication with the groups. For example, we have worked with FETA to identify the options for future maintenance and management, we have met FETA staff to discuss their concerns, and we have met community groups on the north and south sides of the river.

Adam Ingram: What were the main issues that were raised with you during that consultation? How did you respond to the concerns that were raised?

Graham Porteous: The main issues from the staff related to their pension provision. They totally accept that they are going to a new operating company. Their terms and conditions are protected, but their pension provision is not protected under the legislation. Under TUPE, a new company would have to provide a broadly similar pension arrangement, which obviously caused a bit of concern. We took that on board, discussed the matter with the Lothian Pension Fund and decided that the best option for the staff was to have their pensions stay where they are. That is why we will write it into the contract that the successful bridge contractor will apply for admitted body status. Essentially, that means that the staff’s pensions will remain unaffected and that they will stay with the same terms and length of service. Therefore, their pensions are, in effect, untouched.

Raymond Convill (Transport Scotland): I understand that the Scottish ministers are acting as a guarantor for that admittance to the Lothian Pension Fund. That is an additional commitment that was made to address the staff’s concerns.

Graham Porteous: When we met the community councils, they understood what we were trying to do. They were particularly excited about having clear lines of communication and how we would deal with that. Obviously, we were
able to explain that the Forth bridges forum is part of that process.

The community councils were excited about the potential for an improved visitor centre. As things stand, there is very little for visitors to do at the bridge, and there is a huge opportunity for something to happen there.

There was very little from bridge users. The bill will not affect them as such.

Raymond Convill: Another feature was the timing. It was important to try to establish the arrangements quite early on so that people would know where they would be in years to come.

Gordon MacDonald: You have touched on staff issues. You said that staff will be transferred under TUPE and that pensions have been safeguarded. How many staff are affected by that?

Graham Porteous: Seventy-two.

Gordon MacDonald: I understand that there are safeguards for the short term when the transfer takes place, but are there any safeguards for people’s pay and terms and conditions in the longer term?

11:15

Graham Porteous: Yes and no. Nobody is guaranteed a job for life these days—that is an accepted fact. However, the company that takes over the responsibility for the bridge has a duty to employ the staff who are there at that time. That contract will have a set life, which will be a specific period with a series of add-ons envisaged at the end. For example, our typical maintenance contract will have a five-year duration with a series of add-ons at the end—perhaps two plus two plus one, which takes it to somewhere around 10 years.

At the end of that period, staff who are employed on that contract would be entitled to transfer to the next company under the Transfer of Undertakings (Protection of Employment) Regulations, which will safeguard their jobs. At that point, we will ensure that something happens with the pension of anyone who is a member of the FETA staff now and who is still employed by the bridge operating company. The idea is that, in however many years’ time, we will write a provision into the subsequent contract that will protect the pensions of the people who are currently FETA employees.

Gordon MacDonald: Over time, there will obviously be a churn of employees as people retire or move into other employment. Will new staff be employed with the same terms and conditions as existing FETA staff, or will those terms and conditions be up to the new operating company?

Graham Porteous: They will be up to the new company. Nobody else will be admitted to the Lothian Pension Fund, other than the existing FETA staff.

As we have explained to the staff, there is a possibility that the company that takes over could offer to buy out their terms and conditions, which is a standard practice. They could be offered a cash enhancement to transfer from FETA into the new company’s pension fund.

Gordon MacDonald: That is really what I was getting at when I asked my first question.

Raymond Convill: Graham Porteous mentioned a figure of 72 staff. That is for the current staff, but there are also existing pensioners—I have a figure of 60 for current active members. There are those 60 people, then there are the 72 who have been mentioned and then other people who are previous employees. I think that I am right in saying that, if the contract is tendered in the future, the condition that means that those people will continue to be part of the Lothian Pension Fund will continue as well.

Elaine Murray: The bill transfers ownership of FETA’s assets to the Scottish ministers. Is it feasible that some of those assets might be further transferred to, say, a private sector bridge operator?

Graham Porteous: No. The intention is that we will retain ownership of the land. There is no point in our holding on to disposable plant such as lorries that are getting to the end of their lives, but the fixed assets—land and property—will stay with us.

Elaine Murray: FETA has responsibilities other than the management of the bridge. In 2002, the Scottish Executive said that it could fund public transport alternatives, road works, traffic management measures and other schemes. How will those issues be dealt with following the dissolution of FETA?

Graham Porteous: The responsibility for that sort of thing would fall to Transport Scotland.

Elaine Murray: Last week, someone raised with me the sad issue of people committing suicide from the Forth bridge. What sort of safety precautions will be implemented—on the old bridge and the new bridge—to prevent suicides?

Graham Porteous: There is no pedestrian access to the new bridge, because it is a motorway, so there will not be the same sort of problems with people going for a walk and jumping off the bridge.
The set-up on the existing bridge will not change as a result of the bridge operating company taking over. The intention is that the control room staff who monitor the bridge for things such as potential suicides will still do the same job, albeit for a new employer.

Alex Johnstone: How does Transport Scotland intend to develop, let and manage the contract for the management of the Forth road bridge and the Forth replacement crossing?

Graham Porteous: The contract will be based on the existing fourth generation contract, which is for the current maintenance and operation of the trunk road network. We have been through several iterations of that and are now on version 4. The contract has recently been let for the west coast, and we will use that for our base document, while taking on any lessons that have been learned and any observations.

Transport Scotland is fairly experienced at tendering contracts. I will be responsible for the tendering of the contract. As I say, we are basing the contract document on the 4G contract. Although that will take care of the roads on either side of the crossing, and although we maintain other bridges, such as the Erskine, Kessock and Kingston bridges, we will base the Forth replacement crossing part of the document on information that is provided by the Forth Crossing Bridge Constructors and the Forth road bridge section will be based on information that is supplied by FETA staff.

We have employed Halcrow as our development engineer to develop the document; it has done 4G contracts before, and it is working closely with FETA staff to gather together an operating and maintenance manual so that it can all be put into the contract.

Alex Johnstone: So you are at a fairly advanced stage in the preliminaries of putting the contract together.

Graham Porteous: We are getting there. I have a deadline, as I have to be ready to go to tender by June.

Alex Johnstone: But there is nothing particularly novel in what you are doing.

Graham Porteous: No. It is all fairly straightforward.

Alex Johnstone: Thank you.

Paragraph 22 of the policy memorandum highlights FETA’s view that

"it is important that some local accountability is retained in light of the impact of bridge works on the local communities."

How are relations between any new bridge operator and the local community likely to be managed?

Graham Porteous: We will write it into the contract that the contractor will have a duty to consult local people and hold regular meetings. Engaging with local communities is important, so we have to do that with all our contracts. In this case, there is a local community adjacent to the project, but we do that with all our contracts.

We are working hand in hand with FETA to see what it does at this point in time. Whatever that is, similar provision will be written into the contract. For example, if FETA meets with a particular community council every month, we will replicate that in the contract so that the new contractor has to continue to do that.

To ensure that the contractor liaises with the community, the contract will include other provisions on issues such as community initiatives. For example, the current 4G contracts contain a provision that the contractor has to undertake a minimum number of community initiatives in any year. The contractor must also engage with the community through projects with schools and colleges—it will have to do something like four such projects a year—and a development opportunity has to be provided.

We will have the Forth bridges forum, which is a separate entity that has already been set up. It will engage with local communities to make sure that the contractor does what it has to do. There is also an audit function. The PAG—performance audit group—will audit the bridge operating company, which it does for all our contracts. For example, if there are supposed to be four community engagements, we and the PAG will check that they are being done. We will not wait until the end of the year to ask whether there have been four engagements or whether the operator has met the community councils; checks are done monthly. At the end of month 3, if there should have been a meeting with the community council and it has not happened, we will make sure that that is rectified.

Raymond Convill: There are formal terms of reference for the forum, which we can pass to the committee if you require it.

Margaret McCulloch: I want to go back to the procurement process. In the procurement requirements, will you take community value into account? Will there be a requirement to employ people who have been unemployed and who have the necessary skills to do the work that you are procuring? Will there be a requirement to take on apprentices?

Graham Porteous: I appreciate the reason for the question. There will be a specific stage in the procurement process at which we ask the
contractor what he is going to do, but we will have already written into the contract a minimum requirement that he will have to meet. Transport Scotland has a fairly good record—in fact, I think it is an excellent record—of ensuring that local people and apprentices get jobs. For example, in the recently completed M74 project—although it was a construction contract rather than a maintenance one—900 people were employed at the height of construction, over 70 per cent of whom were from the Glasgow postcode. Also, 15 apprentices were employed as a result of the project. All the contracts that Transport Scotland issues have similar provisions. The contract for the Forth replacement crossing has them—I do not know the facts and figures on that, but they are reported on monthly.

We will write it into the Forth road bridge contract that any vacancies that arise will have to be advertised in local job centres. The 4G contract has a provision that 10 per cent of all new recruits must get an apprenticeship or training. For example, we will specify a certain minimum that must be achieved for an annual spend of £10 million. Obviously, it is impossible to say that new people have to be employed year on year because, if the existing people do not leave, there will be no vacancies. However, we will say that either two new recruits or two existing staff members—these numbers are examples—will be trained up to Scottish vocational qualification level 2, and one new member of staff or an existing member of staff will receive professional training. Also, we will say that three work experience places must be provided per annum per £10 million-worth of spend. We will look to see whether any of the tendering companies can better that, but we will put that in as a minimum requirement.

Margaret McCulloch: That is excellent. Thank you.

Jim Eadie: What assessment has been made of the potential impact of the bill on users of the Forth road bridge? I am thinking particularly of cyclists, pedestrians and those who use public transport, given the bridge’s future and continuing use as a public and active travel corridor.

Graham Porteous: There should be no change for users of the bridge. As a result of the bill, they will see nothing new, because things will stay exactly as they are until the new Forth replacement crossing opens. All that will happen is that there will be a different management contractor, which should do exactly the same as happens at present.

When the Forth replacement crossing opens, the traffic on the existing Forth road bridge will reduce—it will be buses, taxis, cyclists and pedestrians. The biggest concern that has been raised is about how we will continue to ensure that cyclists and pedestrians get across in windy or foul weather. There will be no change to that. As things are, in winds above a certain speed—it is either 40 or 50 miles an hour—people are not allowed to walk or cycle over the bridge, so FETA gathers cyclists and pedestrians at one side and organises a vehicle to take them over. It is not a regular service, but if there are three or four people, FETA takes them over. We will replicate that as a condition in the contract. That will be in the bridge operation and maintenance manual, which will be part of the conditions under which the new company will have to operate.

Jim Eadie: That reassurance is most welcome.

The Convener: I understand that Transport Scotland and FETA considered three possible options for the future management of the two bridges. Option 1 was:

“FETA continues to manage and maintain the Forth Road Bridge while the Scottish Government appoints a separate company to manage and maintain the Forth Replacement Crossing”.

Option 2 was:

“A single company is appointed to manage and maintain the Forth Replacement Crossing and the Forth Road Bridge”.

The third option was:

“Responsibility for managing and maintaining the new Forth Replacement Crossing is delegated by the Scottish Government to FETA, in addition to their responsibility for the Forth Road Bridge.”

Why did ministers choose the option that is presented in the bill—that is, option 2?

11:30

Graham Porteous: That option was considered the most cost-effective way of being able to ensure that both bridges were maintained and to prove value for money. The various other options that were examined were discounted because they could not happen.

It would be more expensive to have two separate companies operating the contract because there would be operation and maintenance costs for two companies when one could do it. It is obviously more efficient to have one company doing both.

If we left a new company covering the new bridge and FETA covering the existing bridge, FETA would not need as many staff as it currently has, because there would be far less work for it to do. For example, many of its staff are involved in nightly traffic management. Every night, there are cones out on the Forth road bridge because there is work to be done on it. After the new bridge opens, that will not happen, because there will be much less traffic, so the traffic management staff...
will not be needed. If we went for two separate companies, there would be redundancies at FETA.

FETA could not tender to do both bridges because it is a fully funded Government organisation and, if it used Government funds to tender for the contract, that would constitute state aid and we would be breaching procurement rules.

Therefore, the decision was reached that by far the best option—which FETA supports—is to go for one company looking after both bridges.

**The Convener:** The final business and regulatory impact assessment of the bill's proposals confirms that the cost that is associated with option 3—FETA taking responsibility for both bridges—was not assessed. You have given the reasons why. However, given that, how can the committee be sure that the proposals in the bill represent the best value for money?

**Graham Porteous:** The result of the procurement competition will offer that certainty, because the competitor whose bid wins based on quality and price will be awarded the contract. Therefore, we will be able to prove that we are getting the most cost-effective bid.

**Gordon MacDonald:** I will ask a quick question about how we safeguard the standards of maintenance on the bridges. You mentioned the PAG report on the analysis of standards of work. The latest was from 2011-12. On electrical safety, which is covered by the BS7671 certification, it says that BEAR Scotland’s performance in the north-east has “dipped to fair”, with some “non compliance with BS7671 for M90 Friarton Bridge” identified. The report also states that BEAR’s performance in the south-east has “dipped to fair”, with “no BS7671 certification ... available for ... Kincardine Bridge”;

that Scotland TranServ’s performance in the north-west has “dipped to fair”; and that Amey’s performance in the south-west has “dipped to fair”, with “no BS7671 certification ... available for ... Erskine Bridge”.

That certification is important for electrical assets, and all the performance units so far have “dipped to fair”. How do we stop that happening on the Forth bridges?

**Graham Porteous:** I am not an expert on the operation of the maintenance contract but, based on previous experience, I think that BEAR will have been taken to task behind the scenes for that. It might be expected that one report could show a dip in performance, but I would certainly not expect the next one to show a dip. If that happens, discussions will take place at a fairly high level. I certainly would not expect to see a second such report.

**Gordon MacDonald:** Will there be penalty clauses in the contract so that, if performance dips, penalties will be imposed on the company?

**Graham Porteous:** Personally, I do not like the penalties approach. There will certainly be a mechanism whereby the company does not get money, but it can be dangerous to penalise people by taking money off them. I understand the concept that you are getting at, but what will happen is that the operator will not get paid for something rather than be required to pay back money for not having done something.

**The Convener:** Are there any further questions?

**Jim Eadie:** On the issue of best value, you have said that option 2 represents best value for the taxpayer. However, if I heard your previous answers correctly, it seems that, because of the state procurement rules that apply, option 3 has not been tested, so we do not know whether option 3 would be more cost effective than option 2. Is that a fair assessment?

**Graham Porteous:** Let me just remind myself what option 3 was.

**Jim Eadie:** Under option 3, FETA would continue to have responsibility for the Forth road bridge in addition to its existing responsibilities.

**Adam Ingram:** No, option 3 is that FETA would take on responsibility for the Forth replacement crossing.

**Graham Porteous:** FETA could not take on responsibility for the new bridge without legislative change. At the moment, FETA reports to the FETA board, which is made up of several councillors. We would have an odd situation whereby Transport Scotland was responsible for the road but FETA was responsible, under a different reporting regime, for the existing Forth road bridge with a section of trunk road that was motorway.

Another difficulty is that, although FETA has some great guys who are experienced at what they do with the existing bridge, the new bridge will have a totally different type of structure that they do not have experience of. The new bridge will not be all steel in the way that the existing bridge is, so other skills would need to be brought on board.

**Jim Eadie:** There may well be sound reasons why the Government has chosen option 2, which may well be the most cost-effective option. However, what I am seeking to understand from you is whether option 3 has been tested for cost effectiveness or whether it has been excluded because of the state procurement rules that apply.
Graham Porteous: I will need to come back to you with a written answer on that, as I do not know the answer off the top of my head and I cannot read through all the notes just now. I was not involved in the process. I will come back to you with a written answer on that, if that is acceptable.

Jim Eadie: That would be helpful. Thank you.

The Convener: If there are no further questions, I thank our witnesses very much for coming. I will suspend the meeting briefly to allow the witnesses to leave the room.

11:38

Meeting suspended.
Further to the above evidence session for officials on the Forth Road Bridge Bill, and as agreed by the Committee, I wish to provide a written response to a query raised.

The Bill’s Policy Memorandum and Business Regulatory Impact Assessment refer to three possible options for the management and maintenance arrangements of FETA and the Forth Road Bridge. The Committee queried the absence of costs associated with “Option 3”:

“Responsibility for managing and maintaining the new Forth Crossing is delegated by Scottish Ministers to FETA, in addition to their responsibility for the FRB.”

Mr Jim Eadie MSP put the following question: “…..what I am seeking to understand from you is whether option 3 has been tested for cost effectiveness or whether it has been excluded because of the state procurement rules that apply.”

Ministers chose not to cost this Option because:

- FETA was unable to demonstrate Value For Money (VFM) of its existing operation of the Forth Road Bridge; and,
- there was no mechanism to extrapolate how FETA would achieve VFM in a twin Bridge management strategy. Any benchmarking assessment to compare FETA’s potential VFM in managing the new bridge along with the existing bridge would have to be with other Bridge Operating Companies (eg the Severn River Crossings). However, it was considered that such comparisons would not provide an effective indication of VFM due to significantly differing functions, traffic combinations, scale, age and varying conditions of each structure involved.

Accordingly, in order to establish and ensure VFM, a decision was taken to have a competition for the right to manage and maintain the bridges. Although the possibility of FETA competing for that right was considered, it was discounted due to procurement and State Aid considerations arising as a result of FETA’s public funding.

In summary, although options were considered that would have involved FETA having responsibility for managing and maintaining the new bridge, none was considered feasible. Ministers chose not to cost Option 3 due to the lack of an effective mechanism to assess VFM.
Forth Bridges Forum

At Committee, officials also agreed to provide a copy of the Forth Bridges Forum terms of reference. A copy is attached.

I hope this is helpful, and if you do have any further queries on these or any other issues, do not hesitate to contact Raymond Convill (0141 272 7377) or me.

Yours faithfully,

Graham Porteous

Head of Special Projects

FORTH BRIDGES FORUM

TERMS OF REFERENCE

Purpose: The Forth Bridges Forum is a Transport Scotland-led management Forum, established to ensure local stakeholders remain at the core of the management and operation of the Forth bridges. In addition, it provides a mechanism for the collective promotion of the Forth Replacement Crossing (FRC), Forth Road Bridge (FRB) and Forth Bridge.

Membership: The core members of the Forum are 1 or 2 senior officials from each of the organisations listed below.

Transport Scotland
Network Rail
City of Edinburgh Council
Fife Council
West Lothian Council
Historic Scotland

FETA will be represented on the Forum by Barry Colford, Chief Engineer and Bridgemaster. Additional bodies may be invited to join the Forum dependent on specific workstreams which are to be discussed. For example, bus and train operators may be invited to the Forum to discuss measures to promote cross-Forth public transport.

Classification and Proposed Powers of the Forum: The Forum is managed by Transport Scotland, on behalf of Scottish Ministers. Unlike the Forth Estuary Transport Authority Joint Board, the Forth Bridges Forum is not a legal or independent entity.

Functions of the Forum:
1. To establish and oversee a strategic approach to the operation and maintenance of the Forth bridges;
2. To maintain effective engagement with local communities on issues that may affect, impact or be of interest to them;
3. To promote the location of the bridges spanning the Firth of Forth as a unique tourist destination;
4. To support the Forth Bridge’s application for World Heritage status; and
5. To develop and support schemes and measures to encourage an increase in cross-Forth active and sustainable public transport.
Dear Mr Farrell,

FORTH ROAD BRIDGE BILL – INFRASTRUCTURE AND CAPITAL INVESTMENT (ICI) COMMITTEE EVIDENCE SESSIONS - SUICIDE (REDUCTION)

This note provides the Committee with an update on the proposed approach by Transport Scotland towards the issue of suicide, and its prevention, at the Forth Road Bridge locations. This issue is an extremely important one, and has been of interest to the ICI Committee as part of its scrutiny of the above Bill.

In 2012, NHS Health Scotland published "Guidance on action to reduce suicides at locations of concern". Along with a number of other public bodies, Transport Scotland subscribes to the principles and practices described in this Guidance, and the need to manage the suicide risk at particular locations of concern. The latter includes Bridges because of the opportunity that heights afford those considering taking their own life. There are a number of practical measures outlined in the Guidance that can be taken to address this issue including suicide prevention training, physical barriers, and monitoring of locations.

It is also clear to Transport Scotland that FETA has a number of excellent procedures in place, notably its staff training, which has helped to mitigate this risk at the Forth Road Bridge.

I therefore wish to notify the ICI Committee that, subject to Parliamentary approval of the Bill, Transport Scotland will therefore stipulate within the Forth Bridge Operating Company Contract requirements to which the Company must adhere to reduce and/or prevent instances of attempted suicide at these locations. This will involve applying the NHS Health Scotland Guidance, FETA’s experience, and Transport Scotland's own experience from elsewhere in Scotland. I hope this will be in keeping with the wishes of the Committee.

One further aspect of the NHS Health Scotland Guidance concerns restrictions on media reporting due to the impact on the bereaved, those who may be vulnerable to risk of suicide; and residents affected by such incidents. The Guidance refers to suicides which "involve ‘spectacular’ acts, such as jumping from landmark locations", and discusses limited media reporting.
I hope this is helpful, and if you do have any further queries on this issue, or indeed any other issues in respect of the Forth Road Bridge Bill, do not hesitate to contact Raymond Convill (0141 272 7377) or me.

I am copying this letter to Mr Keith Brown MSP, Minister for Transport and Veterans.

Yours faithfully,

Graham Porteous
Head of Special Projects
Scottish Parliament
Infrastructure and Capital Investment Committee

Wednesday 6 February 2013

[The Convener opened the meeting at 10:03]

Forth Road Bridge Bill: Stage 1

The Convener (Maureen Watt): Good morning and welcome to the third meeting in 2013 of the Infrastructure and Capital Investment Committee. I remind everyone to switch off their phones and BlackBerries. If you are using any electronic devices, make sure that they are just for reading minutes, rather than communication with the outside world.

Under agenda item 1, we will take evidence on the Forth Road Bridge Bill at stage 1 from Barry Colford, chief engineer and bridgemaster of the Forth Estuary Transport Authority. Barry, welcome to the committee, and thank you for your written submission. Jim Eadie will start the questions.

Jim Eadie (Edinburgh Southern) (SNP): Good morning, Mr Colford. Perhaps you could start by telling us your views on the level of consultation that has taken place between the various stakeholders—Transport Scotland, the Forth Estuary Transport Authority, FETA staff and the recognised trade unions—on the proposals that the bill contains.

Barry Colford (Forth Estuary Transport Authority): We have had fairly extensive consultation with Transport Scotland for some time. It has continued since early 2011, but we were in contact and discussions with Transport Scotland before that time because the new crossing was being built and we had some input on the potential future maintenance and operation of the crossing. There has been regular contact between us and Transport Scotland.

Under agenda item 1, we will take evidence on the Forth Road Bridge Bill at stage 1 from Barry Colford, chief engineer and bridgemaster of the Forth Estuary Transport Authority. Barry, welcome to the committee, and thank you for your written submission. Jim Eadie will start the questions.

Jim Eadie: Are there any outstanding issues or concerns on the part of the staff who will be transferred? Are any issues yet to be resolved?

Barry Colford: I would say that it is just the unease about what the future will hold for them and who the contractor is likely to be. All those things will become apparent as we move forward.

Jim Eadie: For completeness and for the public record, will you say whether staff are being retained on the same terms and conditions? I recognise the point that you have already made about pension entitlement.

Barry Colford: Yes. My understanding is that we will all be transferred over with our current terms and conditions. I recognise the point that you have already made about pension entitlement.

Jim Eadie: Thank you.

Alex Johnstone (North East Scotland) (Con): You state in your written evidence that FETA would have preferred to retain responsibility for the Forth road bridge and be delegated responsibility for the Forth replacement crossing. When Transport Scotland came before us, it said that
there were considerable barriers to that. What is your view on Transport Scotland’s assessment of FETA’s capability to manage both bridges?

**Barry Colford:** I think that that is a question for Transport Scotland to answer, but as far as FETA is concerned, obviously, we did not put ourselves up for abolition. We thought that we were doing a good job in maintaining the Forth road bridge. We have done so—we think and hope successfully—since the Forth Road Bridge Joint Board was established in 1947. However, the Government decided that that model was not going to be suitable moving forward.

**Alex Johnstone:** Do you have any particular concerns about the responsibility for the Forth bridge passing to a private sector bridge operating company?

**Barry Colford:** FETA has accepted that the change will happen and we have been working closely with Transport Scotland to try to get the best outcome for the future maintenance and operation of the two bridges and the adjacent road network, because that is what is important.

It is the users that count: the people who use the bridges every day, whether they are pedestrians, cyclists, or other vehicle users. They are the important people in this. Our concern was that the level of service that we hope and think that we have provided over the 50 years since the bridge was opened would be continued. As I said in my written evidence, my concern is focused on the capital programme. There is still a big capital programme to be continued on the existing bridge. FETA has a 15-year rolling programme and we were concerned that that would be continued.

**Alex Johnstone:** Has enough been done to allay your fears in those areas?

**Barry Colford:** The Government has recognised in the financial memorandum that capital works are essential, which is some comfort to us.

**Alex Johnstone:** In your written evidence, you highlighted the importance of the bridge operator’s local accountability. How best might that be maintained if FETA is wound up?

**Barry Colford:** We were pleased—and the FETA convener is on record as saying that he was pleased—that a forum has been set up to take things forward. We have good relationships with the communities on both sides of the Forth. The big structures have a large footprint and make a large impact on the communities, and we have worked hard to minimise their disruption. There will always be disruption when work is carried out on large bridges, and our job, as part of our brief to the communities, was to minimise that disruption. We are pleased that the forum will take that forward.

**Elaine Murray (Dumfriesshire) (Lab):** You will be aware that the City of Edinburgh Council is concerned that it might inherit some £4 million of compensation claims, which previously FETA reimbursed the council for. Is the council right to be worried about that?

**Barry Colford:** I can only say what FETA has budgeted for, regarding the liability for the M9 spur. The M9 spur, which is the road that was built south of the bridge, was built using money from FETA—at the time, we were tolling—and the Scottish Government. The Scottish Government put in £24 million and FETA put in around £16.5 million to the scheme. FETA is liable for any outstanding costs that arise from the scheme. We have budgeted for liabilities of £623,000, which is in our accounts. I cannot comment on any figure other than that. Of that £623,000, about £190,000 is for liabilities for potential claims and the rest is for fees.

**The Convener:** Are you saying that the City of Edinburgh Council’s suggestion is not correct?

**Barry Colford:** I can only say what we have budgeted for: £623,000.

**The Convener:** Why do you think that there is a discrepancy?

**Barry Colford:** I hazard a guess that when such schemes are put out there, lawyers knock on doors and ask people if they have a claim against the Government or whoever. Anyone can put in a claim and I imagine that the council’s figure comes from an accumulation of all those claims. All I can say is that our budgeted cost is £623,000.

**Elaine Murray:** So the council is incorrect in saying that it would be reimbursed for the entire sum, in effect.

**Barry Colford:** I am sorry; I do not understand you.

**Elaine Murray:** In the press material that the council has issued, it indicated that previously FETA reimbursed the entire amount for compensation claims. Is that not correct?

**Barry Colford:** I am not quite sure what the press has said; I tend not to believe much of what the press says, frankly. All I know is that FETA is liable for £623,000.

**Elaine Murray:** The suggestion seems to have come from the council.

**Barry Colford:** I have read quotes in the press that were attributed to me, which I am pretty sure that I did not say.
Jim Eadie: Now you know how it feels to be a politician.

Barry Colford: I can only imagine.

The Convener: You are currently monitoring the condition of the main cable anchorages, and you will report on the condition of the cables following the on-going dehumidification process. Can you provide us with an update on that, and on how the results of those investigations might impact on the future maintenance of the bridge?

10:15

Barry Colford: There are two distinct areas. The main cables have suffered corrosion, and we are taking active steps, including dehumidification, to try to solve that issue. It is an innovative form of treatment. We have said all along that we cannot give unconditional guarantees that it will work, as this is the first time that it has been used. Dehumidification of the main cables of suspension bridges is itself fairly innovative. With cables that have deteriorated in the way that ours have, it is even more innovative—not many have been done. That is one strand of work that we are just about to report on.

The other issue is the anchorages—the places where the cables are held into the ground. We have had concerns about those for a long time, and we are carrying out an investigation into the anchorages, which is costing about £5 million. The main cable work costs about £3.5 million. Both of those are fairly limited investigations, unfortunately—we do not get much for £5 million with such bridges—so we can see only a snapshot, but we have to make significant engineering judgments and decisions based on those snapshots.

I cannot give any details to the committee at present, because I have to report to the FETA board first. The report on the main cables will be in February, and I hope to report to the board on the anchorages in April. Those are just two areas in which we have concerns over the bridge. There are other areas in which we need to carry out works, and those are listed in our written submission. All those capital works will have to be done. Suspension bridges are large capital investments, and we need to look after them properly. This type of investment is similar all over the world—whether it is the Golden Gate or any bridge in Japan or New York, the same level of capital investment is made on such bridges. They cost us, as taxpayers, a lot of money to build, and we need to spend money looking after them properly.

The Convener: Is there collaborative working with the bridge owners in those other countries, so that work is not being duplicated, or is each bridge affected differently because of the different climatic conditions?

Barry Colford: The authority is a committee member of—this trips off the tongue—the international cable-supported bridge operators association, which is made up of the Storebælt or Great Belt bridges in Denmark, the Golden Gate in San Francisco, the New York state suspension bridges, Honshu-Shikoku in Japan and Jiangsu in China. They form the committee of the group, and we regularly exchange information and knowledge, as we all have the same problems, no matter where we are—whether that is ice on the cables, traffic or whatever. I am pleased to say that, in the first week in June, FETA is hosting the conference of this international group; this is the first time that it will have met in the United Kingdom. We are attracting a lot of people from all over the world to come and visit the existing and new bridges and to discuss the issues.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): How does the association help you? Is it of significant assistance to your operation?

Barry Colford: Yes. I can email my colleague at Golden Gate and say, for instance, that we have a problem with painting and an issue has come up. I can ask whether they have ever seen anything of that sort and I will get a reply quickly. It is a confidential exchange of information between client organisations—owners and operators only—so we do not have consultants or contractors. It is a method of getting an unbiased view of what happens with hangers, cables, anchorages, decks and towers—the whole spectrum.

Adam Ingram: Do you think that it should be a contractual requirement on the new operator to join or ensure continued membership of that organisation?

Barry Colford: I said in our submission that continued membership is important. The mechanism for that remains to be seen, but that might be one way forward. That needs a bit of discussion. I would hate to lose that body of knowledge, as we all have the same problems, no matter where we are.

Jim Eadie: Is a subscription—a financial cost—attached to your membership?

Barry Colford: At the moment, there is no subscription. At the workshop that we will hold in Edinburgh in June, we will put together a constitution. The association has run for about 10 years without a constitution and it seems to work fairly well, but we have decided that we had better have some administration and constitution.
arrangements. Engineers love working without those encumbrances but, as membership is beginning to burgeon, we have decided that we need to put together things such as the qualification for membership. We do not have a fee yet, but a fee might be involved. However, it will not be significant.

Adam Ingram: You have talked about a 15-year planning cycle for bridge maintenance. Transport Scotland officials told the committee that the future contract for the management and maintenance of the two bridges would be likely to be of only five years’ duration with add-ons—of perhaps two years, two years and one year—that could take it up to 10 years. What is your view on that length and style of contract?

Barry Colford: I do not think that that is long enough. The minimum requirement for the contract should be 10 years, because bringing a scheme to fruition or even inspecting every component of the Forth road bridge takes us 10 years—the cycle is 10 years. I know that the proposed contract is standard for operating companies in the rest of the network, but it is not the best fit for structures of the bridges’ size.

Alex Johnstone: When we have looked at franchising arrangements for train companies and ferry companies, there has always been an argument about having long or short franchises. Are there parallels between what you just said and what we have discussed before in relation to the length of contracts?

Barry Colford: The situations are slightly different, because the issue with rail operating companies concerns investment in rolling stock and so on. For us, the issue is the time that is taken to procure and put out a piece of capital works and the time that is taken to inspect all the structure. I have spoken about the question to colleagues who deal with other structures. I conclude that 10 years would be a suitable period.

I realise that there are risks on the other side, such as being left with a 10-year contract with an operator that is not performing well. There are good reasons for having a contract of five years plus two years plus two years plus one year. However, the basic five-year contract does not suit the work that is involved in maintaining and operating large structures.

I do not think that I quite answered the question.

Alex Johnstone: You do not have to answer the question, but I have to ask it.

Margaret McCulloch (Central Scotland) (Lab): When Transport Scotland officials were asked why the costs of FETA operating the two bridges had not been assessed, they said: “FETA was unable to demonstrate Value For Money ... of its existing operation of the Forth Road Bridge”.

What are your comments on that?

Barry Colford: FETA is a public body, like any local authority and like Transport Scotland. We feel that we give value for money, and I do not think that Transport Scotland has said that we do not provide value for money. However, it has said that it cannot be proven that we provide value for money.

All that I can say is that we are a public body and we are constrained by procurement regulations, just like everyone else. We put all our capital works and maintenance works that we do not do in-house out to tender. Of course, our staff are not tendered for, but all the other works are.

Margaret McCulloch: My last point is on a similar issue. Transport Scotland officials said that “there was no mechanism to extrapolate how FETA would achieve” value for money “in a twin Bridge management strategy.”

Your views on that would be appreciated.

Barry Colford: I return to the point that our staff are not tendered for and do not go out to competition. In any organisation, staffing costs are a significant part of revenue costs. Our revenue costs are about £5.1 million a year, of which staffing costs are about £3 million. That is a significant part of the revenue cost that does not go out to competition. However, all the other parts of the revenue budget and the capital works are subject to the same rules on competition and tendering as apply to any other public body.

The Convener: As members have no further questions, I thank you for coming to the meeting. Your evidence will help our consideration of the bill.

I suspend the meeting to allow this witness to leave and the next witnesses to come in.

10:26

Meeting suspended.
On resuming—

Forth Road Bridge Bill: Stage 1

The Deputy Convener: The third item on the agenda is stage 1 evidence on the Forth Road Bridge Bill from the City of Edinburgh Council. The council submitted a written statement to the committee on 1 February and supplementary written evidence on 13 February.

I welcome the witnesses and thank them for their written submission. We have with us Councillor Lesley Hinds, who is the convener of the council’s transport and environment committee; and Ewan Kennedy, who is the transport policy and planning manager.

I invite questions to both witnesses.

Margaret McCulloch: Good morning. In your written evidence, you raise concerns that the dissolution of the Forth Estuary Transport Authority would remove councillors from any front-line role in the management of the Forth bridges. What practical implications could that have for cross-Forth transport?

Councillor Lesley Hinds (City of Edinburgh Council): I am sure that you are aware from the evidence that, at the moment, the FETA board has elected members from a number of local authorities. We have a number of elected members who sit on it. Our representation is all-party, but the local elected member also sits on the board. That gives us not only a strategic transport view but a view from the local level.

If a forum is to be set up to replace FETA, it would be beneficial to have directly elected councillors on it. We have two bridges at the moment and are about to have three. They are important to the economy of Edinburgh. As iconic buildings—I do not know whether we want to call them buildings, but their situation is iconic—they are important to tourism, which is obviously extremely important not only to Edinburgh but to the local community in South Queensferry in particular.

I am sure that all parties want fewer quangos with unelected members. We therefore feel that the forum would be an opportunity to have directly elected members representing the community and addressing transport strategy.

Margaret McCulloch: What do you think having councillors as members would add overall to the operation that would not be given by the proposed approach?

Councillor Hinds: I mean no disrespect to officers, but we are elected members. I mentioned the local community in South Queensferry, which has had a very good relationship with the FETA board, and there has been good consultation. I believe that having elected members on the forum would give added impetus to community representation. Obviously, officers will provide more of a technical background, but elected members represent the local community and the council as a whole.

Gil Paterson: Do any changes need to be made to accommodate councillors on the forum? Would those councillors be the local ward councillors, or just councillors in general?

Councillor Hinds: That would be up to recommendations from the committee or the minister. However, in principle, we feel that we should have perhaps one or two elected members on the forum to represent the local community. The City of Edinburgh Council is the most affected authority. The other affected local authorities have not commented on the issue, but we feel strongly that the forum should have at least one elected member. It would be up to the local authority to decide whether it would be appropriate to have the transport convener or a local elected member, for example, on the forum. However, we would like to have at least one elected member from Edinburgh on the forum.

Gil Paterson: In effect, there would be two elected members on the forum, because there would have to be one from the authority on the other side of the bridge, would there not? Is that what you are suggesting?

Councillor Hinds: A number of elected members, including from West Lothian, are on the FETA board just now. However, the two authorities that are most affected are Fife Council and the City of Edinburgh Council. Edinburgh and Fife councillors have traditionally alternated as FETA’s convener and vice-convener. I am not saying that other local authorities are not important in this context, but the local authorities in Edinburgh and Fife are those that are most directly affected by the bridges, in relation to their economies and so on.

Gil Paterson: I just want to press you a wee bit further. You think that there should be two elected members on the forum in any case. However, all the associated councils might have elected members on it. That would mean that there would be quite a number of councillors on the forum.

Councillor Hinds: I would not like to suggest what the membership should be, but I suggest that the two most relevant local authorities are Fife Council and the City of Edinburgh Council. If the committee or the minister wanted to recommend that councillors should be on the forum, those two local authorities should be represented.
Gil Paterson: Okay.

Elaine Murray: I want to touch on the issue of compensation. The City of Edinburgh Council is concerned about compensation arising from the M9 spur/A90 project. Transport Scotland disagrees with the council’s view and has said that there would be adequate cover from the £600,000 referred to in the financial memorandum. However, the City of Edinburgh Council believes, on the basis of submitted claims, that compensation could be as much as £4.4 million and that when FETA is dissolved the liability would not automatically transfer to Scottish ministers but could rest with the council. Can you say a bit more about your concerns?

Councillor Hinds: I will ask Ewan Kennedy to talk about the more technical aspect, but in principle we as a local authority need some comfort that we will not have financial liabilities when FETA is abolished and we move to the new system. I am sure that you, as an elected member, want us to ensure that we protect council tax payers’ money. If you do not mind, I will ask Ewan Kennedy, who has been more involved in the process, to say a bit more. I understand that we have had further discussions with Transport Scotland that have been reasonably fruitful.

Ewan Kennedy (City of Edinburgh Council): Good morning. I will give the committee a quick indication of the background to the issue, which relates to the construction of the M9 link road. FETA promoted the link road shortly after it came into being in 2002 as a transport authority, which gave it powers not only to maintain the existing bridge, but to introduce or construct measures in and around the bridge.

After considering how best to procure the M9 link road, FETA asked the City of Edinburgh Council to act as its agent and to design, construct and deliver the road, on the understanding that all costs that the council incurred would be reimbursed by FETA. An issue has arisen around where the liabilities sit. The council proceeded and entered into contracts so, in effect, the liabilities sat with the council. Obviously, the road is now built. The particular issue is that the council used its compulsory purchase powers to acquire land, but there are outstanding claims from landowners that could still end up at arbitration. That situation will pertain until October 2013.

In drafting the bill, Transport Scotland considered FETA’s liabilities, but the City of Edinburgh Council’s liabilities were not totally transparent. Before the submission by the council and subsequent conversations with Transport Scotland, Transport Scotland was unaware that the council used its powers to acquire land. On the figures that are in the public domain, the best estimate of the likely level of compensation is £93,000. However, there are 180 claims from former landowners on the table, with a combined sum of £4.4 million. Those could end up being resolved through arbitration by the Lands Tribunal for Scotland, so there is no certainty about the outcome. We believe that it is not likely that the figure of £4.4 million will come to pass, but it is perfectly possible that the figure could be higher than £93,000.

The issue is about the council safeguarding its position. The relationship between FETA and the council has been absolutely fine, and all the council’s expenditure thus far has been covered by FETA. However, with FETA being dissolved, we obviously want to ensure that the liabilities are properly taken account of.

Elaine Murray: I presume that the concern is about the valuation of land that was compulsorily purchased.

Ewan Kennedy: Yes.

Elaine Murray: There are two sorts of compensation—there is compensation for things such as noise and fumes, but there is also compensation for the value of land, over which there is dispute. Will the land remain in the ownership of the City of Edinburgh Council?

Ewan Kennedy: No. The road in question is becoming a trunk road. In fact, it is probably a trunk road now, because it became a trunk road by virtue of the bill to construct the new bridge.

Elaine Murray: I presume that the land that was purchased will transfer to the ownership of Transport Scotland.

Ewan Kennedy: That is correct.

Elaine Murray: The issue is important, given the sums of money that could be involved. Did Transport Scotland make any effort to consult the council as it was drawing up the bill?

Ewan Kennedy: The first formal consultation with us was the official consultation in late autumn or early winter. At official level, there have been on-going discussions between the city council and FETA with regard to the outstanding matters relating to the construction of the road. I am not sure how the current situation has arisen. Somehow, the liability that sits with the council has not been transparent and it has not been picked up as, in effect, a FETA liability.

Elaine Murray: What comfort do you need? Would a declaration on the record by the minister when he comes to see us that the liability is definitely not the City of Edinburgh Council’s be sufficient, or do you require something greater than that?

Ewan Kennedy: We would like a statement that all liabilities that are associated with the
construction of the M9 link road will pass to the Scottish ministers.

Councillor Hinds: I must say that there have been constructive discussions following the statements that were given to the press. There is now an understanding in Transport Scotland of where the council is coming from and there have been constructive discussions. We feel that we have a bit more comfort now that those discussions are on-going.

Gordon MacDonald: When Barry Colford spoke to the committee on 6 February, he said:

“Anyone can put in a claim and I imagine that the council’s figure comes from an accumulation of all those claims. All I can say is that our budgeted cost is £623,000.”—[Official Report, Infrastructure and Capital Investment Committee, 6 February 2013; c 1343.]

That is made up of £190,000 of potential claims and £433,000 of outstanding fees.

You said that the total of £4.4 million is not likely to come to pass. Have any of the 180 claims around the compulsory purchase of land been settled? Has settlement happened outwith those 180 claims?

10:45 Ewan Kennedy: Yes. There are 180 claims outstanding, and there has been settlement around other land deals that were part of the construction of the road.

Gordon MacDonald: What proportion of all the compulsory purchase deal claims are those 180 claims? Are the vast majority still outstanding or is it only 1 or 2 per cent?

Ewan Kennedy: I do not have that detail with me. I could submit it separately if required.

Gordon MacDonald: I know that there have been discussions about this, and Keith Brown started to allude to the fact that ministers would be picking up all liabilities relating to the situation. If that was not the case, what effect would it have on the council’s budget, bearing in mind the size of that budget?

Councillor Hinds: I am sure that to the council tax payer, it does not matter whether it is £1,000, £1 million or £1 billion—the fact is that we have not budgeted for the liabilities and therefore if they were not picked up by ministers we would have to find the money from savings or from somewhere else. It would have an effect on the budget because the liabilities are not in the budget.

Gordon MacDonald: There would also be savings in the council’s budget because you would no longer be responsible for some of the services that you provide to FETA.

Councillor Hinds: That is not until 2015, and will be planned in our budget, in the same way as we have planned for police and fire services this year. There will be budget planning come 2015 when FETA is no more. We will obviously have to take into account the financial and committee support that we provide. Work is already being done on that for 2015.

Jim Eadie: I have a couple of questions. One is on the Forth bridges forum and the other is about the public and active travel corridor.

I was interested in the point, which I thought you made rather effectively, that there is a need for directly elected representatives to be on the Forth bridges forum, given that there had been such representatives on the FETA board previously. Are there any other mechanisms that you think would help to facilitate and foster the good working relationship that you want to see between the road operator and local authorities? Clearly, the forum is an important one, but are there others that would be helpful?

Councillor Hinds: There has been a very good relationship involving the bridgemaster and the team that is in place. I know South Queensferry reasonably well and I know that the feeling is that the relationship has been very good. I would not like to speak on the team’s behalf but some of the mechanisms that have been in place, such as regular meetings with the bridgemaster to address any issues that arise, would be helpful. I am sure that, as staff transfer over, the same staff will be dealing with the community. If there was an elected member on the forum, that elected member could ensure that they regularly met the communities in the Edinburgh area that are directly affected, particularly the community in South Queensferry.

Jim Eadie: So having a local elected member provides a voice and a platform for the local community to raise any concerns and issues that they have about how the bridge is being operated and what impact it is having on surrounding roads.

Councillor Hinds: Yes, particularly where there are problems, as there have been in the past. There is a good relationship between the bridgemaster, their staff and the community council in particular, which is very active. The benefits of that include the fact that there is now a business improvement district in South Queensferry, which links into tourism and so on. It would be helpful if there was a councillor on the forum, even if they were not the locally elected member—I hope that we work on an all-party basis in Edinburgh—to ensure that the community’s voice was heard.

Jim Eadie: I will now ask about the public and active travel corridor. My colleagues will be aware
that I regularly ask questions about active travel, particularly cycling. I have a lot of constituents who cycle to and from work. What is the council doing to ensure that, following the opening of the new bridge, buses, cyclists and pedestrians have as smooth and quick a journey as possible to and from the southern access to the bridge?

**Councillor Hinds:** Our active travel action plan, which deals with cycling and walking, is viewed throughout the country as being one of the best. It is being reviewed in the next few months, and one of the matters for review will be how we can ensure that provision for active travel is worked out in the context of the construction of the new bridge.

Discussions are taking place with Fife Council, given the number of people who live in Fife and work in Edinburgh or who live in Edinburgh and work in Fife. Funding has been available from the minister, which will improve conditions for active travel, particularly the cycle network from the bridge into Edinburgh, which I think is being constructed at the moment. We welcome that money.

As I say, we will be reviewing the active travel action plan, and one of the key points will be to encourage people to walk and cycle in the area around South Queensferry—and in Fife, at the north end—once the new bridge is open.

**Jim Eadie:** You mentioned the iconic status of the bridge, and you have spoken about active travel to and from Fife. Have there been any discussions between the City of Edinburgh Council and Fife Council to ensure that we maximise the benefits of having a cycling corridor between Fife and Edinburgh?

**Ewan Kennedy:** There is a public transport access strategy—

**Jim Eadie:** I am asking about what discussions have taken place between the two councils specifically to maximise the benefits of this opportunity.

**Ewan Kennedy:** In terms of cycling?

**Jim Eadie:** I am talking about a cycling corridor—an active travel corridor between the two local authority areas.

**Ewan Kennedy:** It is part and parcel of the package that West Lothian Council, Fife Council, the City of Edinburgh Council and the south east of Scotland transport partnership put together, along with Transport Scotland, when the Forth Crossing Bill was being promoted. The output from that included a range of facilities, including park and ride, bus lanes and cycle facilities. We continue to work with Transport Scotland and our partner authorities. A range of measures are provided, covering the short term, medium term and long term. It is all part and parcel of a sustainable transport approach to managing growth in cross-Forth trips. The aim is to have the key parts of that package in place from 2016, when the new bridge opens.

The range of measures in the package include those for active travel and cycling. We made a strong point when the Forth Crossing Bill was going through about the facilities for walking and cycling on the existing bridge, and we went as far as to suggest that there should perhaps be those facilities on the new bridge. That package is the key strategy that is shared between the councils and Transport Scotland.

**Jim Eadie:** As an Edinburgh MSP, I am well aware that the City of Edinburgh Council is an exemplar in this area and that it has very good policies in place, but I wanted to give you that opportunity to put those comments on the record.

**The Deputy Convener:** On that pleasant note, I thank Councillor Hinds and Mr Kennedy for their evidence this morning. As was intimated earlier, we will address the matter with the minister next week.

10:54

*Meeting suspended.*
The compensation claims referred to in the Council's evidence to the Committee relate to the M9 Spur Extension/A90 Upgrading project and fall into two separate categories. These are:

1. Claims for compensation due to the acquisition of land needed to construct the new road

There have been 8 claims of this type. To date, 7 of these claims have been agreed, although a payment remains outstanding to one claimant. 1 claim is presently being negotiated. There is no cut-off date for claims of this type to be submitted but it is considered highly unlikely that any further claims will arise.

2. Claims for compensation where no land was acquired e.g. due to increased noise, vibration, smell, fumes etc.

At present, 181 claims of this type have been received. Of these, 7 have since been withdrawn. Of the remaining 174 claims, there are 6 cases where two separate claims have been submitted by the same claimant, acting via different agents. There are therefore 168 unique claimants who currently have unresolved claims. No new claims of this type can be submitted after October 2013.

7 March 2013
The Convener: Under agenda item 1 we will take evidence on the Forth Road Bridge Bill at stage 1 from Keith Brown, Minister for Transport and Veterans, and his officials: Susan Conroy, principal legal officer; Raymond Convill, bill team officer, Transport Scotland; and Graeme Porteous, head of special projects, Transport Scotland. I welcome you all and invite the minister to make some opening remarks.

The Minister for Transport and Veterans (Keith Brown): I am grateful to the committee for the opportunity to discuss the Forth Road Bridge Bill, which paves the way for new arrangements on one of the most prestigious routes in the Scottish trunk road network.

We believe that the bill is an important piece in the jigsaw that is emerging at the Forth, which includes the new Forth crossing, the Fife integrated transport system, the dedicated public transport corridor on the existing road bridge and of course the twin-bridge strategy. It reflects a new set of realities: the presence of a wholly new road bridge; the ageing condition of the existing road bridge; new road layouts on either side of the bridges; and new traffic management arrangements.

In looking at what we propose, it is worth considering what the alternatives were. One option would have been to have two separate bridge operators. Our view is that in all likelihood that would have meant redundancy or at least uncertainty for Forth Estuary Transport Authority staff. It was also judged to be uneconomic—potential operating savings of £6 million on a five-year contract cannot readily be ignored.

The new arrangements require the associated procurement of an operating contract providing an efficient, cost-effective twin-bridge strategy for the Forth corridor.

We have new road orders and traffic management to replace existing arrangements. They will be developed with FETA, which will have an essential role as the existing operator. It has experienced staff who are highly regarded and who will have a major role in the future success of the arrangements. We also have the involvement of the traffic sections of the new police service of Scotland, the Forth crossing bridge constructors and Transport Scotland.

My stated requirement is for the new operating contract to meet, if not surpass, existing levels of service. The contractual commitments currently being developed will provide for that. We fully
accept that the Forth road crossing and the Forth road bridge will be unique and demanding structures within the strategic road network. However, the operational challenges that are posed will be no less than those on our existing major network structures such as the Erskine and Kingston bridges and the busiest pressure points that we have on the network such as the Raith interchange and the Edinburgh city bypass, where, as things stand, operating companies already operate successfully.

I suspect that, by virtue of the operating company’s role in respect of such high-profile structures, the reputational risk involved will generate high standards. However, there will be advice and support—for instance, from Traffic Scotland’s new control centre, which will be right on the doorstep to help with the arrangements.

We note that the bill will impact on existing Forth Estuary Transport Authority staff and the local communities, and we appreciate that a well-respected employer will be dissolved under the proposals. Although councillors will not be involved in the management—which is the same anywhere else in the trunk road network—the public can still make representations to them, and the public and councillors can make representations to ministers.

Conversely, we welcome the securing of the pensions arrangement, which has been important to staff and to FETA in general. We are grateful to the Lothian Pension Fund for advice and support. We recognise that the Transfer of Undertakings (Protection of Employment) Regulations are not perfect, but they provide security for terms and conditions. Taken together, pensions and terms and conditions have been extremely important for staff.

Furthermore, safeguards for the staff and the communities will be stipulated in the contract through community benefit clauses and other requirements, most notably in the form of apprenticeships and training opportunities, ethical sourcing practices and regular community engagement. It is important that those arrangements are monitored through Transport Scotland’s performance audit group.

The project team has continued to meet the FETA management fortnightly and has put itself at the disposal of FETA staff who may wish to ask questions or raise concerns. Further meetings with local community council representatives north and south of the river are still taking place and updates on the bill, the operating company procurement and the Forth bridges forum are being provided.

The forum, which I initiated, provides for the interests of local communities, as it is at the core of the management and maintenance of the bridges. It can act as a valuable check if local community groups remain dissatisfied after engagement with any individual forum member on relevant matters.

I have to use the term “Forth replacement crossing” as we do not yet have a name for the bridge, but work on that is in progress. Incidentally, we have had around 8,000 suggested names, the most interesting of which is Kevin. The Forth replacement crossing contact and education centre was officially opened last month; it is an impressive facility and provides a unique focal point for education and on-going community engagement by the FRC project.

That is a quick overview, which I hope is helpful to the committee in outlining the context and beneficial impacts of the bill. I look forward to trying to answer any questions that you might have.

The Convener: Thank you very much. Margaret McCulloch will start the questioning.

Margaret McCulloch (Central Scotland) (Lab): I will ask you a few questions about the liabilities for the M9 spur extension and the A90 upgrading contract. The City of Edinburgh Council initially raised concerns that it may remain liable for some compensation costs associated with the project following the dissolution of FETA. Councillor Lesley Hinds indicated in her evidence on 20 February that discussions between the CEC and Transport Scotland on that issue were ongoing and that the council hoped for an amicable outcome.

Can you assure the City of Edinburgh Council that it will not be liable for any compensation costs relating to the M9 spur and A90 upgrade project following the dissolution of FETA?

Keith Brown: I am aware of that discussion, which took place after I attended the committee last week. I made the situation plain in the committee meeting and to the City of Edinburgh Council. FETA currently has an obligation to the road that was previously constructed, and we are taking on all FETA’s obligations, so I do not see what the council’s continuing concern is.

However, we must ensure that proper procedures are followed. For example, if there is a claim and someone thinks, “Well, the Government stands behind this so we can be quite ambitious in our claim”, we will have to ensure that the proper procedures are followed, whether that involves district valuers taking valuations, or lands tribunal processes if necessary. However, we have said from the start that we would take on those obligations.
Discussions are on-going between us and FETA and between FETA and City of Edinburgh Council, but the council should take comfort from what I have said, as we have made plain before.

Margaret McCulloch: Can you expand a wee bit on how you intend to formalise the position?

Keith Brown: The bill itself provides for us to take on all FETA’s obligations. FETA has a legal agreement with City of Edinburgh Council whereby it pays for any compensation claims, and some of the claims—the second half—are not due in until September this year. I do not know what else is required to formalise the position. We have said that we will take on the obligations and we have made that plain to the council.

A potential £4.4 million liability made its way into the public domain, but the City of Edinburgh Council does not expect it to be that much. Its estimate is about £93,000. Many claims come in, and everyone knows that they are actually much higher than the amounts that are eventually settled. The City of Edinburgh Council and FETA previously agreed the provision and I do not see how there can be any continuing confusion. The claims are still to come in, but FETA will stand behind them and the Government stands behind FETA. Under the bill, FETA will be dissolved and we will take on all its obligations.

The City of Edinburgh Council has all the comfort that it needs. When Lesley Hinds was here last week, she mentioned that discussions are on-going between Transport Scotland and FETA, so they have that comfort.

09:45

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): You mentioned in your opening remarks that the TUPE regulations will apply. For the record, can you give an assurance that the terms and conditions of FETA staff, including their pension entitlements, will receive the fullest legal protection when they transfer to any new bridge operating company?

Keith Brown: Yes. There will be the fullest legal protections under the TUPE provisions. That is a fairly standard procedure. For example, we ensured that it happened in relation to the ferry contracts. The pension arrangements are a bit different, and we have gone much further than the legal protection obliges us to go, by taking on the work that we have done with the Lothian Pension Fund. Staff terms and conditions are protected by TUPE, and the pensions are not enhanced but continuing along the lines that they were on previously. My understanding is that the outcome whereby we reached an agreement with the Lothian Pension Fund—the local government pension fund—is what the staff were seeking. We have been mindful of the uncertainty that has existed for staff, and we have provided the fullest protection that we can.

The Convener: When your officials were here, they said that FETA could not bid to manage the Forth bridges due to procurement and state aid considerations, but in the 1990s local authorities did win road maintenance contracts. What legislation has been put in place since then that prevents a body such as FETA from making such a bid?

Keith Brown: There are a number of points to be made on that. It is not so much legislation that prevents that but the stance of the European Commission if it believes that proper process has not been followed. FETA does not have the ability to demonstrate value for money in what it does. I think that Barry Colford said that when he was before the committee. There would have been substantial risk in awarding the contract to an organisation that is unable to demonstrate value for money and has not market tested its services. It is a question of the risk that would be attached to making an award of that nature.

It is important to recognise that FETA has no Scottish Government representation on its board and the Scottish Government has no direct influence on how it is run. In that regard, it would probably be regarded as a separate economic entity, but the European Commission has the final competence in what is and is not classified as state aid and in what state aid is permissible. Different considerations will apply.

It is a question of considering the likelihood of a challenge from the European Commission. As you will know, convener, not least in relation to ferries, we never know until it happens whether the European Commission will decide that it will take action, whether or not it is provoked into taking action by somebody making representations or a complaint. The risks of awarding a contract to an organisation that, for reasons to do with its formation, has not been able to demonstrate value for money in the way in which we need it to would simply have been too much for us.

Alex Johnstone (North East Scotland) (Con): The cost of allowing FETA to maintain both bridges has never been calculated because it was not presumed to have been an option. How can we be sure that we are getting best value for money if we do not know what the comparative figures are?

Keith Brown: We can be sure of that by going through the tendering process, which, after all, is an effective way of getting value for money. Are you asking why we did not compare the cost of...
simply going with FETA with the outcome of a tendering process?

Alex Johnstone: No one has ever calculated the cost of running the two bridges together under FETA. Is the fact that we do not know that comparative figure not a weakness in the overall process?

Keith Brown: I think that it is but, as I pointed out, FETA could not produce that information for the existing bridge. As a result, it would be pretty hard for us to come up with a worked-out and credible figure for running the two bridges. Given that, in any case, the second bridge is something of an unknown quantity in that respect, we need to take it to the market and see what its experts think, while using—and giving a guarantee that we will use—FETA’s expertise. Everyone in the authority will continue to work and bring their expertise to bear, not just on the existing bridge but on the new one.

That approach gives us the best of both worlds: we use existing expertise and, at the same time, go to the market for the best possible and most efficient price.

Alex Johnstone: It was indicated in previous oral evidence that FETA could not take responsibility for the new bridge without legislative change. What sort of change would have been required—primary legislation or simply some tinkering with regulation?

Keith Brown: The option of delegating responsibility for the new bridge to FETA was identified and considered as one of three options, another of which I mentioned in my opening statement and all of which are set out in the policy memorandum. Legislation would be needed to expand FETA’s functions because it was set up exclusively to maintain the existing bridge. Although some consideration was given to the form that such legislation might take, we did not reach a concluded view on the matter and, in any case, the option was ruled out for other reasons, primarily the value for money factor that I mentioned earlier. We considered the option and, although we did not follow it through to the nth degree, we understood that FETA was set up for reasons particular to that bridge and that we would have had to change its constitution, which relates only to that bridge. We did not go into any more detail about the legislative changes that would have been required.

Alex Johnstone: So you do not know whether primary legislation would have been required.

Keith Brown: Legal experts will be able to answer that question better than I can, but I would imagine that, as FETA was established under primary legislation, primary legislation would be needed to change it. Perhaps we can get a legal view on the matter.

Susan Conroy (Scottish Government): The 2002 order setting out FETA’s functions does not allow for it to manage and maintain a second bridge, but that could have been amended through primary legislation extending the order. Consideration was given to whether that could be achieved by other means but, as the minister has pointed out, no concluded view was reached on whether primary or secondary legislation would be sufficient.

Alex Johnstone: Thank you.

Gordon MacDonald (Edinburgh Pentlands) (SNP): Transport Scotland officials have indicated that the bridge maintenance contract is likely to be let for an initial five-year period, with possible extensions. However, FETA has expressed concern about the length of the contract and has recommended a minimum contract length of 10 years. Given Transport Scotland’s experience of maintaining other bridges, what is your view on the right length of such a contract?

Keith Brown: Although we have said that the contract will run for five years, we have also made it clear that there could be extensions. Apart from anything else, a large number of companies in Scotland are interested in trunk roads maintenance contracts and having longer-term or very long-term contracts can exclude others who might have developed new processes or efficiencies that we might want to tap into. As a result, that length of contract is not necessarily a bad thing.

I think that I am right in saying that, by and large, the companies that bid for the contract will not have to make a large-scale investment, such as a ferry company would by investing in vessels. They would have to invest in plant and so on, but such companies would tend to have that in place anyway. The normal reason for having a longer contract is to allow bidders to invest over a longer period and get a return on their investment, but that does not apply to the same extent in this case.

Five years seems to be a good length for the contract, but we reserve the option to extend it, which could occur for a number of reasons. We have done that with the trunk roads contracts that we have already let. The best outcome is for the contract to run for five years and for us to give ourselves the option of extending it if we want to.

Gordon MacDonald: Are the contracts for the Kessock bridge and the Kingston bridge the normal length for which such a contract would run?
Keith Brown: The Forth crossing situation is unique. There is no separate transport authority for the bridges that you mention; they are all part of Transport Scotland and the trunk road network.

That would be the usual length for a contract, although—as I said—we have extended the trunk roads contracts. We are about to move into the fourth generation of those contracts, and we are looking at similar lengths for them.

Gordon MacDonald: FETA was also concerned about the membership of international bridge associations. Do you intend that the new operator will maintain membership of those groups?

Keith Brown: That is an interesting issue, and it is very important, especially to the bridgemaster, who gets a great deal from those associations. The issue will come to the fore later this year when FETA has a chance to welcome other members of the International Cable Supported Bridge Operators Association—that is a long title—to Edinburgh.

There could well be some added value in maintaining contact with the operators of similar bridges, and one option might be for membership to pass to Transport Scotland rather than to the Forth bridge operating company. I have asked officials to consider that issue further in consultation with FETA and, in particular, with Barry Colford.

Adam Ingram: Minister, you will be aware of the recent controversies over the insidious practice of blacklisting in the construction industry. We have also heard negative publicity around aggressive tax avoidance schemes that involve using payroll companies. Can you give an assurance that the bridge maintenance contract will not be awarded to a company that has been found to engage in employee blacklisting or that uses aggressive tax avoidance measures?

Keith Brown: As you would expect, the Scottish Government deplores such behaviour. The contract that we intend to enter will contain provision for ethical sourcing practices, which is important. That will mean that freedom of association and the right to collective bargaining, which have been the source of some of the blacklisting allegations, will be respected.

The contract will guarantee that workers will have the right to join or form trade unions of their own choosing and to bargain collectively. The employer will be required to adopt an open attitude towards trade unions, and the contract will require that workers’ representatives are not discriminated against. Given that those issues have been the source of the blacklisting allegations, the contract will ensure that such practices do not happen. There are investigations and inquiries into those companies that have been accused of such practices, in which we are taking a keen interest.

Adam Ingram: And on the tax avoidance practices?

Keith Brown: I am not sure of the full extent of the clause on ethical sourcing practices that will be in the contract—my officials might want to say more about tax avoidance.

Graham Porteous (Transport Scotland): The contract will take the stance that companies that have not fulfilled their tax obligations may be barred from competing, but we will take advice from the Scottish Government legal department and from whichever policies are in place at the time.

Elaine Murray (Dumfriesshire) (Lab): Minister, you said in your opening statement that the reason that councillors were not involved in the new body was because there were no councillors involved in any similar bodies. However, the City of Edinburgh Council’s concern is that, although councillors are involved in FETA, the new Forth bridges forum will involve only officials.

Would you be prepared to consider the involvement of transport conveners from the affected local authority areas, or councillors with transport responsibilities, or possibly ward members from the affected community areas in order to enable community concerns to be raised directly?

10:00

Keith Brown: I listened to the evidence that was given, but it was unclear to me what was being asked for. Would the council’s transport spokesperson or the local member be involved? Which councils would be represented? That was left very unclear in my mind.

I gave the matter some consideration, especially at the start of the process. Coming from a local authority background, I am always keen to see councillors have as much influence as possible. However, it would be unique if we had elected representatives at that level involved in looking after an operating contract that is wholly the responsibility of the Scottish ministers. That would be not dissimilar to asking for the Scottish ministers to be involved in a local roads management project. I think that that would be wrong, because there is a line of accountability about who is responsible for taking the decisions on the operating contract and who is responsible for the expenditure. That proposal would substantially muddy the waters.

However, we need local representation, because the bridges are in a unique situation. The two different communities on either side will be
linked by three different bridges built in three different centuries. That is unique in Scotland, so I understand the point that has been made. For that reason, we have established the forum to deal with not only those issues that might arise after the bridge is completed, but those that might be raised by the community during the process of building the new bridge. It is important that we ensure that local community representatives have their say on the forum, but I do not think that that would be added to by putting in a level of elected member representation.

FETA was a completely different body from the forum that has been established. Transport Scotland and the Government will stand behind the contract, so there will be democratic accountability. We should not complicate that further by putting in elected representatives who would not be responsible for the spending decisions.

Elaine Murray: Can you say a few words about how local communities will be represented in the operation of the forum?

Keith Brown: Sure. As you will know already, community councils and businesses are represented. Transport Scotland and the bridge operating companies go along to speak at the forum and I receive regular updates on issues that are raised there. Perhaps Graham Porteous can say more about that.

Graham Porteous: We have had several meetings with representatives from the north and south sides of the bridge. The forum provides people with ample opportunity to explain their concerns and how they would like us to take things forward. The contractor is required to meet community groups regularly, and one purpose of the forum is that, if community groups are unhappy with what the contractor is doing, they have the avenue of the forum to make representations on their behalf.

The Convener: As there are no further questions on the Forth Road Bridge Bill, I thank all the witnesses for their evidence.

That concludes the committee’s evidence gathering at stage 1. We hope to consider a draft report on the bill at our meeting on 13 March.

10:03

Meeting suspended.
The following is the response of the Forth Estuary Transport Authority (FETA) to the Capital Investment Committee’s call for views on the general principles of the Forth Road Bridge Bill introduced into the Scottish Parliament on 11 December 2012. This response is also made to assist the Finance Committee’s examination of the Bill.

FETA is the successor Authority to the Forth Road Bridge Joint Board (FRBJB) and is the Authority responsible for the maintenance and operation of the Forth Road Bridge (FRB). The background to the establishment of FETA and the FRBJB are well described in the Policy Memorandum accompanying the Forth Road Bridge Bill.

Consultations over the arrangements for the operation and maintenance of both the existing bridge and the new crossing have been ongoing between Transport Scotland and FETA staff since early 2011. Indeed, discussions over some of the technical issues concerning both bridges preceded that date.

These discussions have been open and extensive. Naturally, the Authority’s preferred option was to remain responsible for the maintenance and operation of the existing bridge and be delegated the responsibility for the maintenance and operation of the new Forth Crossing. The Authority considered that the experience of the staff and the involvement of locally elected members from the Constituent Councils in providing local accountability, had proven to be a successful model for managing the existing bridge and could be expanded to include the new crossing.

However, although that option was not selected by the Scottish Government, FETA are pleased that the principle of a single body having responsibility for both bridges has been included in the Bill and that the expertise of the FETA staff, and the resources of the Authority at South Queensferry, will be fully utilised.

The existing bridge has a large footprint in the existing communities on both sides of the Forth and FETA has good relations with these communities. The new crossing is likely to have a similar impact and FETA welcomes the setting up of the Forth Estuary Forum. This Forum will hopefully continue the work of the Authority in ensuring that the local communities are fully engaged with the management of these structures.

The Authority particularly welcomes the intention that all FETA Staff will be protected under the Transfer of Undertakings (Employment) Regulations and that there will be no compulsory redundancies as a result of the transfer. In addition, the Authority is grateful for the work carried out by the Scottish Government and Transport Scotland to ensure that it will be a contract requirement that the appointed bridge operating company will be admitted to the Lothian Pension Fund thus allowing FETA employees to continue with their current pension scheme. This will be helpful in efforts to retain the unique
knowledge and experience that has been built up amongst long-serving staff at the Authority.

The Authority was concerned that sufficient funding for maintenance, essential repairs and strengthening works on Forth Road Bridge would be continued after the dissolution of the Authority. Each year FETA publishes a 15 year rolling plan for such capital schemes and the current programme of works include:

- Replacement of the main deck joints
- Suspended span under deck access refurbishment
- Suspended spans under deck gantry refurbishment
- Strengthening and painting of the suspended span truss
- Resurfacing of the orthotropic deck and approach viaducts
- Painting of the approach viaduct box girders

However, the Authority is pleased that the Scottish Government have recognised in the Financial Memorandum that these capital works are essential and will have to be funded whatever the arrangements are for future governance of the bridge.

The Authority is also pleased to note that the Scottish Government have recognised the importance of the existing byelaws made by FETA and that provision will be made to replace some of the byelaws using road traffic regulations.

FETA is an active member of associations and bridge groups in Scotland, the UK and internationally. The maintenance of these large bridges is a specialised area of expertise and close contacts with the owners and operators of similar bridges from Japan to the USA have been established by FETA. These associations have proven to be crucial during the inspections and major retrofitting works carried out on the bridge not least in the work done on the main cables. FETA would like to see that these associations are continued within the new arrangements proposed.

FETA’s 15 year planning cycle is a reflection of the long term nature of most the Forth Road Bridge’s inspection and maintenance requirements. The majority of capital projects are years in the planning and have to be carefully scheduled and prioritised in order to minimise the impact on traffic, manage interdependencies and make best use of resources. Therefore, any contract awarded for the maintenance and operation of these major bridges should be of a duration that encourages the operator to take a similar long term view. FETA considers that to achieve this would require the minimum contract duration to be set at 10 years.

The priority of FETA has always been the safe and efficient operation and maintenance of the Forth Road Bridge. The Authority will continue to work closely with Transport Scotland and the Scottish Government to make a success of the proposed new working arrangements to ensure that the level of service provided for nearly 50 years to users crossing the Forth is continued.
Barry Colford
Chief Engineer and Bridgemaster,
Forth Estuary Transport Authority
23 January 2013
FIFE COUNCIL  
WRITTEN SUBMISSION

Q1. Transport Scotland has carried out a programme of consultation and engagement with stakeholders on the proposals contained in the Bill. Do you have any comments on the adequacy of this activity?

We are satisfied that the engagement with the stakeholders has been adequate.

Q2. The Bill envisages that a single bridge operating company be appointed to manage and maintain the Forth Road Bridge and the replacement crossing. Do you have any comments on this overall intention and should other alternatives for the management and maintenance of the Forth crossings be considered?

We are satisfied with this way forward gives best value for money and able to be more versatile in maintenance procedures and operationally easier to coordinate the operations of the 2 bridges under the one management body.

Q3. The Bill would trunk the road over the Forth Road Bridge and the Schedule to the Bill specifies the precise description of the road that is to become a trunk road. Do you have any comments about this proposal and the description included in the Schedule?

It makes sense that this key link in the strategic network is part of the main trunk road network and becomes the responsibility under the one authority.

Q4. The Bill would dissolve the Forth Estuary Transport Authority and transfer its property, rights and liabilities to the Scottish Government. Do you have any comments about these proposals?

Agree in principal.

Q5. The Bill provides for employees of the Forth Estuary Transport Authority to be transferred to the bridge operating company appointed by the Scottish Government. Do you have any comments about the impact that this proposal could have on FETA employees?

Existing staff have vast experience and knowledge of the running and maintenance of the existing bridge and this must not be lost. However due consideration must be taken of their terms and conditions and they must be protected by the Transfer of Undertakings (Protection of Employment) Regulations.
Q6. Do you have any comments on the estimated costs associated with the Bill, which are included in the Financial Memorandum? (The Finance Committee will consider the Financial Memorandum in detail and will report to the lead Committee, so any responses to this question will be copied to the Finance Committee.)

Not in a position to answer this question.

Dr Bob McLellan
Head of Transportation & Environmental Services
Fife Council
1 February 2013
Q1. Transport Scotland has carried out a programme of consultation and engagement with stakeholders on the proposals contained in the Bill. Do you have any comments on the adequacy of this activity?

The Council has no view on this.

Q2. The Bill envisages that a single bridge operating company be appointed to manage and maintain the Forth Road Bridge and the replacement crossing. Do you have any comments on this overall intention and should other alternatives for the management and maintenance of the Forth crossings be considered?

The Council supports the proposed arrangement whereby the management of both bridges falls within the remit of one organisation. A coordinated approach, which places both bridges under the management of a single party, will provide benefits for both strategic planning and the ongoing operation and control of the bridges, including responses to incidents or any emergency works that might be required. The Council is supportive of an arrangement which maximises the potential to maintain consistent and effective operation and traffic flow on all strategic routes to and from the city as this will assist the Council in effectively managing its local road network.

Following construction of the Forth Replacement Crossing, the Forth Road Bridge will operate in conjunction with it as part of the Managed Crossing Strategy. The Council considers the joint operation of both bridges, one for general traffic, and the other for public transport, cycles and pedestrians, as strategically very important to the success of cross forth road transport. Under this arrangement the existing bridge will be the only facility for cyclists and pedestrians to cross the Forth in this area. The Council therefore wishes to reinforce its assertion that it is essential that this arrangement is properly managed and maintained in to the future. The Council also seeks assurances that the existing bridge will be repaired and maintained to its current operational standards on an ongoing basis, with sufficient resources being allocated to facilitate this and therefore ensure the bridge’s longevity.

Q3. The Bill would trunk the road over the Forth Road Bridge and the Schedule to the Bill specifies the precise description of the road that is to become a trunk road. Do you have any comments about this proposal and the description included in the Schedule?

The Council would support the trunking of the road over the Forth Road Bridge as it is a vital strategic link for the whole of the east of Scotland and for the wider UK transport network. Designation as a trunk road would most accurately reflect this status and is considered to be essential if FETA is to be
dissolved. Furthermore, for the same reasons given in our response to Question 2, the Council is supportive of an arrangement where the roads over the Forth Replacement Crossing and the Forth Road Bridge and the associated public transport corridor are all managed by the same organisation that manages the surrounding trunk road network.

Q4. The Bill would dissolve the Forth Estuary Transport Authority and transfer its property, rights and liabilities to the Scottish Government. Do you have any comments about these proposals?

The Council does not object in principle to the dissolution of FETA, but does have significant concerns regarding the lack of any proposed replacement arrangement that would provide elected members from this Council and the other affected Local Authorities to provide input to issues relating to the Forth crossings.

Four elected members of The City of Edinburgh Council sit on the FETA Board and one of these undertakes the role of Convener every second year. The current make up of the Board ensures that the local authorities most affected by the operation of the Forth crossings, are represented at elected member level.

As a key stakeholder in FETA, the Council values the opportunity to influence decisions relating to these issues, particularly those associated with the Forth Road Bridge. These decisions can have significant impacts on both public transport and general traffic, with consequent economic effects on the city of Edinburgh, as well as causing localised impacts for residents in the Queensferry area.

The Council notes the establishment of the Forth Bridges Forum (FBF) in November 2011, meaning the Council will be able to communicate its views at Officer level at FBF meetings. The Council does, however, consider that this represents a significant reduction in its ability to influence decisions relating to the Forth crossings and to ensure that the needs and concerns of affected local communities are given adequate consideration.

To ensure that these communities have a democratic voice, and that meaningful consultation continues to be carried out on an ongoing basis, both with Local Authorities and directly with the affected communities, the Council considers it to be essential that all affected Local Authorities be given the opportunity for elected members to sit on the FBF. This would be a development of current informal arrangements where Officers from Local Authorities attend the FBF.

The Council also notes that both the membership and remit of the FBF are extensive and varied. In addition, the FBF only meets quarterly, whereas the FETA Board currently meets approximately every 2 months. The Council therefore has significant concerns that the FBF, in its current form, may not be the most effective way to address issues which are directly affecting local communities on a day-to-day basis.
Given the above, the Council would therefore seek a formal commitment from Scottish Ministers that the FBF will be reconstituted to include elected members from all affected Local Authorities.

The Council also has financial concerns relating to the dissolution of FETA. These are set out in our response to Question 6 and have also been submitted separately in response to the Finance Questionnaire associated with the Financial Memorandum.

Q5. The Bill provides for employees of the Forth Estuary Transport Authority to be transferred to the bridge operating company appointed by the Scottish Government. Do you have any comments about the impact that this proposal could have on FETA employees?

The Council values the high levels of dedication and professionalism demonstrated by FETA staff in undertaking their duties. It is therefore strongly supportive of the arrangements contained within the Bill to ensure that there will be no compulsory redundancies when FETA is dissolved and that all staff will transfer to the new bridge operating company with their existing terms and conditions protected under the TUPE Regulations. The Council would strongly oppose any suggestion that these arrangements should be modified or removed from the Bill.

Q6. Do you have any comments on the estimated costs associated with the Bill, which are included in the Financial Memorandum? (The Finance Committee will consider the Financial Memorandum in detail and will report to the lead Committee, so any responses to this question will be copied to the Finance Committee.)

The Council has submitted its views on the Financial Memorandum separately. These are reproduced below:

The Financial Memorandum states that The City of Edinburgh Council is expected to sustain “a small reduction in income…in relation to the amounts currently paid by FETA for finance and administrative services”. However, this reduction is expected to be “offset by the freeing up of resources…to devote to other areas”.

The dissolution of FETA will remove the ongoing requirement for the provision of financial services and legal advice and the bi-annual provision of committee clerking services by the Council. The Council also provides estates services; acting on FETA’s behalf for land acquisition, rent reviews and lease renewals. The average annual loss of income to the Council of ceasing to provide these services would be approximately £110,000. However, it is accepted that this would be at least partially offset by the opportunity to re-allocate resources accordingly.
The Council would be able to absorb the annual loss of income due to ceasing to provide FETA with financial services, legal advice, committee clerking and estates services.

The Bill also has potential financial implications for the Council relating to the M9 Spur Extension/A90 Upgrading contract. Although the M9 Spur was made into a trunk road in April 2011, the Council has retained responsibility for all outstanding issues relating to this contract.

The Council undertook this contract acting as an agent for FETA, which has reimbursed all costs incurred by the Council in connection with it. Various costs are still outstanding relating to land acquisition, compensation claims (for noise, disturbance, vibration, smell, fumes etc.) and outstanding contractual issues (road pavement compliance testing, remedial works, renewal of road markings, supervision of outstanding works and retention payments).

The estimated total value of these costs is around £600,000 and it is noted that paragraph 26 of the Financial Memorandum states that Scottish Government accounts will make provision for a liability of this value, in connection with the A8000 dualling, on dissolution of FETA (although the paragraph only refers to a liability for potential land compensation claims).

However, it should be noted that this sum is based on an estimated total settlement value for all compensation claims relating to noise, disturbance, vibration, smell, fumes etc. of £93,000. To date, 180 such claims have been received with a combined value of approximately £4.4 million. It is also possible that other outstanding costs may exceed the values currently estimated.

The Council would therefore seek a formal commitment that Scottish Ministers will reimburse all costs incurred by the Council in connection with this contract following the dissolution of FETA.

The City of Edinburgh Council
1 February 2013
UCATT

WRITTEN SUBMISSION

UCATT (Union of Construction, Allied Trades and Technicians) is the largest specialist union for construction workers in Scotland and across the UK and Ireland, with members in both the public and private sectors. UCATT is the lead union among the signatories to the National Working Rule Agreement of the Construction Industry Joint Council and the Joint Negotiating Committee for Local Authority Craft and Associated Employees. UCATT is represented on a number of specialised industry bodies by the Scottish Secretary including; Construction Scotland, Construction Skills, Scottish Building and Apprenticeship Training Council, The Cross Party Group for Construction.

Committee Questions:
UCATT wishes to make certain brief points rather than answer each question individually.

1. UCATT was never made aware of the initial consultation with Transport Scotland. Consequently we did not participate in the engagement with stakeholders.

2. Our interest is in the potential for jobs, those currently existing, and the creation of new jobs as the maintenance of both the existing bridge and new crossing is examined. This should be seen as an opportunity to support the Scottish economy.

3. It seems that the potential to retain Forth Estuary Transport Authority (FETA) has been dismissed by the Scottish Government in the name of efficiency savings, and the establishment of a single operating company, all but agreed. FETA was a not for profit company and enshrined democratic accountability, by having a board with elected representatives making decisions. Clearly, the decision to privatise the operation of the bridge management and maintenance will end this culture and organisation.

4. The Bill establishes that upon the dissolution of FETA, the property, rights, and liabilities transfer to the Scottish Government. UCATT has members working for FETA at this minute and their concern is about jobs, terms and conditions and pensions. They require clarity on their own position. UCATT notes with interest that the Scottish Government will have responsibility for the contract, which will begin in 2015; our members are concerned about the length of the contract and require stability in employment.

5. UCATT expects that our members’ terms and conditions, and pay, will be protected under TUPE regulations. Furthermore, on reading the Bill, the members’ pension entitlement and contributions to the Lothian
Pension Fund (LPF) Scheme will continue. UCATT agrees with the Scottish Government that any company seeking to win any contract to operate the contract must guarantee that access to the pension scheme remains as is for employees, by establishing admitted body status with the LPF.

6. UCATT is also concerned that the private company seeking to deliver the contract, should not be any company that has been found to engage in the insidious practice of Blacklisting, of which some roads companies have had involvement. This should be clearly set out in the procurement document. By the same token, no company that operates aggressive, immoral tax avoidance schemes, through payroll companies or other methods, should be considered for this contract.

7. In conclusion, we would like to be kept informed of the progress of the Bill, and be advised of potential contractors, which would enable UCATT to set up dialogue and foster a working relationship with any new company.

UCATT
1 February 2013
UNITE
WRITTEN SUBMISSION

Background

The importance of this Bill extends beyond issues of management and maintenance and indeed ownership of the current Forth Road Bridge (FRB) and the Forth Replacement Crossing (FRC).

That an unambiguous legal objective of the Bill is to remove barriers which prevent a single contract status for the maintenance and management of the FRB and FRC, with the Scottish Government (and by extension the public purse) acting as a guarantor for the successful tender, deserves scrutiny in the current economic and political climate.

However, at this first stage of the process, or main objective is to safeguard the future employment status and conditions of our members and the wider FETA workforce as a result of the Scottish Government's proposals and this is reflected accordingly in these issues of concern.

Dissolution of FETA – protecting workers rights

Of immediate concern to Unite is the future of our members and the wider workforce currently employed by the Forth Estuary Transport Authority (FETA). Our members will face a TUPE situation as employees will be transferred directly into the employment of the new operator which successfully tenders for the FRB contract.

In the first instance, this creates a significant degree of uncertainty among the workforce, further fuelled by the common knowledge for well over a year that the FRB maintenance contract would be tendered out. Although the Scottish Government assures there will be no compulsory redundancies as a result of the TUPE process, the legislation remains fraught with potential pitfalls for workers.

The Trade Union Congress (TUC) response to the Department for Business, Innovation & Skills (BIS) call for evidence on the Effectiveness of TUPE regulations in January 2012 highlighted that TUPE often results in a significant erosion of pay and conditions.¹ Unite shares this view and urges that we cannot be complacent in protecting the terms and conditions of the FETA workforce throughout the tendering process and beyond.

We emphasise these concerns with a view to offsetting any future problems for staff terms and conditions or employment status arising from the two bridge contract – e.g. a single workforce for the FRB and FRC.

We trust the Committee will take on board the need for companies tendering to follow best practice on this matter, fully engaging with the workforce and their trade union representatives upon award.

Procurement

The tendering process for the construction of the new FRC posed a number of questions of the Scottish Government’s approach to procurement. More broadly, Unite supports the view that our procurement policies are vital in the pursuit of economic growth and in the need to offset the failed economic policies of the UK Government.

Radical reform of the procurement agenda - worth an estimated £9 billion according to the Reid Foundation\(^2\) - can help achieve this and this approach should apply to the contract award for the FRB & FRC maintenance contract.

Unite is clear in our view that the overarching future procurement agenda in Scotland should:

- Shift focus on moving away from lowest price tender to quality and sustainability which largely benefits people, not profit in public procurement; and

- Introduce a guarantee that companies identified as involved in blacklisting should be barred from tendering for public contracts in Scotland (this also includes known anti-trade union activities).

It has been well documented in recent weeks the depths of the blacklisting scandal. Scottish Government ministers have admitted firms involved in the FRC consortium were identified by the Information Commissioner Office (ICO) as subscribing to the Consulting Association, which charged its clients £3,000 a year and £2.20 for each blacklisting inquiry.\(^3\)

Quite simply there is no place for the scourge of discrimination and anti-union activity in modern Scottish society. The Scottish Government must ensure the utmost transparency and best practice in the procurement process for all future contracts.


We highlight these broader concerns to the Committee in the context of the financial implications of the Bill where the Scottish Government have stressed issues of value for money, reform, economies of scale and savings as key factors in the procurement process.

Unite believes the Committee should be pivotal in ensuring this Bill and process does not repeat the oversights of previous governments and executives with regards to contract awards.

Unite
1 February 2013
THE CITY OF EDINBURGH COUNCIL
SUPPLEMENTARY WRITTEN SUBMISSION

The Council refers to its previous Written Submission in response to the Forth Road Bridge Bill, dated 1 February 2013, and to Transport Scotland’s subsequent Press Release, dated 5 February 2013.

The Council acknowledges Transport Scotland’s statement within their Press Release that “The Council would not be expected to meet any outstanding claims where the liability rests with FETA, ……….”

However, the Council would respectfully suggest that this does not address the main financial concern raised in its previous Written Submission, which was that the liability for all outstanding compensation claims relating to the M9 Spur Extension/A90 Upgrading project currently lies with the Council rather than with FETA.

The Council undertook this project at the request of FETA, acting wholly as its Agent, and all costs incurred by the Council to date have been reimbursed by FETA.

However, the Compulsory Purchase Order for the land required to construct the new road and the contract for its construction were promoted by the Council as Roads Authority. Compensation claims arising from the land acquisition and the construction of the road have therefore been served on the Council rather than on FETA.

Consequently, as the Bill currently stands, any liabilities relating to these claims that remain outstanding on dissolution of FETA would not automatically transfer to Scottish Ministers.

The Council is therefore seeking a formal commitment that Scottish Ministers will reimburse all costs incurred by the Council in connection with this project following the dissolution of FETA.

The City of Edinburgh District Council

12 February 2013
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. No.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

2. N/A.

Did you have sufficient time to contribute to the consultation exercise?

3. N/A.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

4. The Financial Memorandum states that The City of Edinburgh Council is expected to sustain “a small reduction in income...in relation to the amounts currently paid by FETA for finance and administrative services”. However, this reduction is expected to be “offset by the freeing up of resources...to devote to other areas”.

5. The dissolution of FETA will remove the ongoing requirement for the provision of financial services and legal advice and the bi-annual provision of committee clerking services by the Council. The Council also provides estates services; acting on FETA’s behalf for land acquisition, rent reviews and lease renewals. The average annual loss of income to the Council of ceasing to provide these services would be approximately £110,000. However, it is accepted that this would be at least partially offset by the opportunity to re-allocate resources accordingly.

6. The Bill also has potential financial implications for the Council relating to the M9 Spur Extension/A90 Upgrading contract. Although the M9 Spur was made into a trunk road in April 2011, the Council has retained responsibility for all outstanding issues relating to this contract.

7. The Council undertook this contract acting as an agent for FETA, who have reimbursed all costs incurred by the Council in connection with it. Various costs are still outstanding relating to land acquisition, compensation claims (for noise, disturbance, vibration, smell, fumes etc.) and outstanding contractual issues (road pavement compliance testing, remedial works, renewal of road markings, supervision of outstanding works and retention payments).
8. The estimated total value of these costs is around £600,000 and it is noted that paragraph 26 of the Financial Memorandum states that Scottish Government accounts will make provision for a liability of this value, in connection with the A8000 dualling, on dissolution of FETA (although the paragraph only refers to a liability for potential land compensation claims.

9. However, it should be noted that this sum is based on an estimated total settlement value for all compensation claims relating to noise, disturbance, vibration, smell, fumes etc. of £93,000. To date, 180 such claims have been received with a combined value of approximately £4.4 million. It is also possible that other outstanding costs may exceed the values currently estimated.

10. The Council would therefore seek a formal commitment that Scottish Ministers will reimburse all costs incurred by the Council in connection with this contract following the dissolution of FETA.

**Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?**
11. The Council has no view on this.

**If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?**
12. The Council would be able to absorb the annual loss of income due to ceasing to provide FETA with financial services, legal advice, committee clerking and estates services.

13. However, as per our response to Question 4, the Council would seek a formal commitment that Scottish Ministers will reimburse all costs incurred by the Council in connection with the M9 Spur Extension/A90 Upgrading contract following the dissolution of FETA.

**Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?**
14. The Council has no view on this.

**Wider Issues**

**Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?**
15. Please refer to our responses to Questions 4 and 6.

**Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?**
16. The Council has no view on this.
1. The following is the response of the Forth Estuary Transport Authority (FETA) to the Capital Investment Committee’s call for views on the general principles of the Forth Road Bridge Bill introduced into the Scottish Parliament on 11 December 2012. This response is also made to assist the Finance Committee’s examination of the Bill.

2. FETA is the successor Authority to the Forth Road Bridge Joint Board (FRBJB) and is the Authority responsible for the maintenance and operation of the Forth Road Bridge (FRB). The background to the establishment of FETA and the FRBJB are well described in the Policy Memorandum accompanying the Forth Road Bridge Bill.

3. Consultations over the arrangements for the operation and maintenance of both the existing bridge and the new crossing have been ongoing between Transport Scotland and FETA staff since early 2011. Indeed, discussions over some of the technical issues concerning both bridges preceded that date.

4. These discussions have been open and extensive. Naturally, the Authority’s preferred option was to remain responsible for the maintenance and operation of the existing bridge and be delegated the responsibility for the maintenance and operation of the new Forth Crossing. The Authority considered that the experience of the staff and the involvement of locally elected members from the Constituent Councils in providing local accountability, had proven to be a successful model for managing the existing bridge and could be expanded to include the new crossing.

5. However, although that option was not selected by the Scottish Government, FETA are pleased that the principle of a single body having responsibility for both bridges has been included in the Bill and that the expertise of the FETA staff, and the resources of the Authority at South Queensferry, will be fully utilised.

6. The existing bridge has a large footprint in the existing communities on both sides of the Forth and FETA has good relations with these communities. The new crossing is likely to have a similar impact and FETA welcomes the setting up of the Forth Estuary Forum. This Forum will hopefully continue the work of the Authority in ensuring that the local communities are fully engaged with the management of these structures.

7. The Authority particularly welcomes the intention that all FETA Staff will be protected under the Transfer of Undertakings (Employment) Regulations and that there will be no compulsory redundancies as a result of the transfer. In addition, the Authority is grateful for the work carried out by the Scottish Government and Transport Scotland to ensure that it will be a contract requirement that the appointed bridge operating company will be admitted to the Lothian Pension Fund thus allowing
FETA employees to continue with their current pension scheme. This will be helpful in efforts to retain the unique knowledge and experience that has been built up amongst long-serving staff at the Authority.

8. The Authority was concerned that sufficient funding for maintenance, essential repairs and strengthening works on Forth Road Bridge would be continued after the dissolution of the Authority. Each year FETA publishes a 15 year rolling plan for such capital schemes and the current programme of works include:

- Replacement of the main deck joints
- Suspended span under deck access refurbishment
- Suspended spans under deck gantry refurbishment
- Strengthening and painting of the suspended span truss
- Resurfacing of the orthotropic deck and approach viaducts
- Painting of the approach viaduct box girders

9. However, the Authority is pleased that the Scottish Government have recognised in the Financial Memorandum that these capital works are essential and will have to be funded whatever the arrangements are for future governance of the bridge.

10. The Authority is also pleased to note that the Scottish Government have recognised the importance of the existing byelaws made by FETA and that provision will be made to replace some of the byelaws using road traffic regulations.

11. FETA is an active member of associations and bridge groups in Scotland, the UK and internationally. The maintenance of these large bridges is a specialised area of expertise and close contacts with the owners and operators of similar bridges from Japan to the USA have been established by FETA. These associations have proven to be crucial during the inspections and major retrofitting works carried out on the bridge not least in the work done on the main cables. FETA would like to see that these associations are continued within the new arrangements proposed.

12. FETA’s 15 year planning cycle is a reflection of the long term nature of most the Forth Road Bridge’s inspection and maintenance requirements. The majority of capital projects are years in the planning and have to be carefully scheduled and prioritised in order to minimise the impact on traffic, manage interdependencies and make best use of resources. Therefore, any contract awarded for the maintenance and operation of these major bridges should be of a duration that encourages the operator to take a similar long term view. FETA considers that to achieve this would require the minimum contract duration to be set at 10 years.

13. The priority of FETA has always been the safe and efficient operation and maintenance of the Forth Road Bridge. The Authority will continue to work closely with Transport Scotland and the Scottish Government to make a success of the proposed new working arrangements to ensure that the level of service provided for nearly 50 years to users crossing the Forth is continued.
Consultation

*Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?*

1. We did not take part in either consultation.

*Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?*

2. Not applicable

*Did you have sufficient time to contribute to the consultation exercise?*

3. Not applicable

Costs

*If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?*

4. The Forth Estuary Transport Authority (FETA) is a Scheduled body, contributing to the Local Government Pension Scheme (LGPS), locally administered by Lothian Pension Fund (LPF). As the Bill looks to dissolve FETA, it is important that the costs of pension liabilities already accrued by current (and previous) employees of FETA can be paid for. It is reassuring that the Scottish Government have agreed to act as guarantor for these liabilities.

5. When FETA is dissolved in 2015, as required under Lothian Pension Fund’s Funding Strategy Statement (FSS), we would instruct our Fund Actuary to calculate the liability at that time and we would require payments to be made in respect of those liabilities.

6. We have concerns over the use of different terminology in relation to the valuations of assets and liabilities in the Financial Memorandum as this could lead to potential confusion.

7. Paragraph 24 shows the value of the pension deficit in respect of FETA as £4.6million. This figure is taken from FETA’s accounts and is calculated using prescribed assumptions under International Accounting Standard 19 (IAS19). The actuarial valuation at March 2014 will be undertaken for the purposes of setting employer contribution rates for those employers active in the Fund. This uses different assumptions to the IAS19 basis.
8. For the purposes of assessing liabilities and setting contribution rates for FETA on its wind up in 2015 (referred to in Table 3, paragraph 27), a more prudent basis than both the IAS19 and actuarial valuation bases will be used. The value of assets and liabilities of the pensions will depend on investment market returns in 2015.

9. As noted in paragraphs 23 and 25, the Scottish Government has undertaken to guarantee the liabilities of current and previous members of the LGPS on dissolution of FETA, as well as the new operating company’s admission to the Fund. Given this commitment from the Scottish Government, discussions have been ongoing between Lothian Pension Fund, Transport Scotland and the Scottish Government on the pace of funding these liabilities. A formal legal agreement will be drafted to encompass all these points.

10. Another issue which will need to be considered is the payment of compensation pensions. These are unfunded benefits in respect of additional pension awarded to members who were made redundant by FETA. These are discretionary payments and although administered by LPF, the amount paid is recharged to FETA on a monthly basis. The current total annual amount of unfunded benefits in payment is £42,298.20.

11. The FSS sets out the Fund’s approach to funding pension liabilities, including details of how cessation valuations are calculated. The FSS is available on our website www.lpf.org.uk

**Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?**
12. See response to Question 4 (above).

**If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?**
13. Not applicable.

**Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?**
14. In addition to points raised under Question 4 above:

15. The actual pensions liability in 2015 is also dependent on investment markets at the time – adding a further degree of uncertainty. Changes in membership will also have an impact on the value.

16. Pensions are payable for life, and the compensation pensions mentioned under Question 4 above also have provision for a dependant spouse or partner’s pension on the member’s death. The timescales for this liability are therefore uncertain.
17. Following the Hutton Review and Public Service Pension Bill, reform of all public sector pension arrangements (including the LGPS) is required by 2015. Depending on the nature of these reforms, the scale of liabilities and future contributions could change. To date there have been no formal announcements regarding the LGPS in Scotland, therefore no comment can be made on how such changes will impact on the final FETA liability.

**Wider issues**

*Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?*

18. See response to Question 4 (above)

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*

19. We are not aware of any other pensions costs.
Our ref: 2013/FRB0006

26 March 2013

Dear Sue

As you will know, the Forth Road Bridge Bill is currently at Stage 1 of its consideration by the Scottish Parliament. As part of that process, the Infrastructure and Capital Investment’s Committee report recommended that a formal communication be issued to the Council before the passage of the Bill in respect of liabilities incurred by the City of Edinburgh Council on behalf of FETA to the A8000/M9 Spur. Therefore, I am writing to you to confirm the following.

Section 2 of the Bill will transfer all of FETA’s property and liabilities to the Scottish Government, and Transport Scotland Officials will continue to work, within an agreed timeline, with FETA and the City of Edinburgh Council to ensure that FETA’s liabilities are properly accounted for in the transfer.

As I have stated on a number of occasions Scottish Ministers will meet all those liabilities for which FETA is responsible.

Future budgets, indeed prepared by FETA and your own budgets explicitly allow for the associated claims and costs. As mentioned at Committee, and as you know, amounts in cases such as these often prove less than initially forecast.

I trust this letter and previous statements provides the assurances the Council is seeking.

Kind regards

KEITH BROWN
Forth Road Bridge Bill: The Minister for Transport and Veterans (Keith Brown) moved S4M-06057—that the Parliament agrees to the general principles of the Forth Road Bridge Bill.

After debate, the motion was agreed to (DT).
The Minister for Transport and Veterans (Keith Brown): I welcome the opportunity to open the debate on the general principles of the Forth Road Bridge Bill. I thank the Infrastructure and Capital Investment Committee for its work in leading on the bill and the Finance Committee for its work and the assistance that it has provided.

The Infrastructure and Capital Investment Committee received a number of submissions and held several evidence sessions on the bill. I am grateful to all those who contributed to that process. A number of important issues were raised, and the debate provides an opportunity to hear those views expressed and to reiterate the benefits that the proposed arrangements offer; it also provides an opportunity to go through the committee's report.

I am pleased to note that the committee acknowledges that the bill will support the Scottish Government objective of implementing a twin-bridge maintenance strategy and that it supports the bill's principles. I also note that the committee has welcomed the approach that ministers and officials are taking, while recognising that work is needed to make the commitments a reality.

The bill's provisions pave the way for another important stage in the evolution of the motorway and trunk road network. Trunking the road across the Forth road bridge and the adjacent routes will allow for this important structure, and its well respected staff, to become full partners in the trunk road and motorway network and the successful operating company approach of managing the road and bridge network efficiently and effectively. It will provide for the most cost-effective solution for this vital crossing and will complement the new Forth crossing under construction.

The committee commented favourably on the Scottish Government's decision to contract a single bridge operating company to manage and maintain both bridges. Why was that ministers' preferred option? First, Scotland's motorway and trunk road network performs well and is well regarded, with our recent 4G contracts—the framework in which the new bridge contractor will operate—providing a sophisticated approach to asset management.
Long-term contracting to network maintenance has delivered continual improvement and significant efficiency savings—£18 million was saved in 2011-12. A recent review by the Highways Agency in England highlighted how Scotland’s approach can generate cost savings without compromising service delivery, my publicly stated intention in the bill.

Of course, standards must be maintained. Although remedial action will be taken against an operator if necessary, delivery is based on inclusive team working by the client—Scottish ministers and Transport Scotland—the private operators and PAG plus, the performance audit group.

A virtuous circle of improvement via a system of incentives, obligations and shared best practice contributes to efficiencies, with regular inspections providing a no surprises regime that enhances delivery and prevents, rather than simply corrects, faults. The existing road bridge and Forth Estuary Transport Authority staff will join that environment.

Secondly, as the committee has acknowledged, state aid considerations and the possibility of challenge meant that ministers were correct not to take the risk of allowing FETA to bid for the contract to manage and maintain the new bridge.

David Stewart (Highlands and Islands) (Lab): Was specific legal advice taken on that? Was there likely to be a state aid impediment in those circumstances?

Keith Brown: I have just made the point that the committee acknowledged the legal situation that ministers were in and the possibility of challenge, and that ministers were correct not to take the risk of allowing FETA to bid for the contract. It was not possible to demonstrate that delegating the functions to FETA would have realised value for money, and we must also bear it in mind that FETA was not set up for that purpose. A competitive procurement exercise was clearly the right approach for all concerned and meets the risks that I have mentioned. Members will also know that operating contracts have been the preferred choice of previous Administrations.

Section 2 of the bill makes comprehensive provision for the transfer of FETA’s liabilities. I repeat that Scottish ministers will meet the liabilities for which FETA is responsible. The committee report describes concerns that some of FETA’s liabilities may remain with the City of Edinburgh Council. Officials will work to an agreed timeline with FETA and the City of Edinburgh Council to ensure that FETA’s liabilities are properly accounted for in the transfer. I have provided assurances on that matter. In addition, future budgets explicitly allow for the associated claims and costs and, as mentioned in committee, amounts in such cases often prove less than initially forecast. The council has estimated less than £100,000 for part 1 compensation claims.

The committee recommended that a formal communication be issued to the council on that issue before the passage of the bill. I have done that today by assuring the council that section 2 will transfer all FETA’s property and liabilities to the Scottish Government.

A cessation payment will apply to pension liabilities. We are obliging the new contractor to apply for admitted body status. It will also be expected to cover the costs of employees. As the committee noted, that will apply to successor operating companies, too. Legacy costs need to be covered and, since FETA will no longer exist, it falls to Scottish ministers to act as guarantor. We will do that.

Various respondees to the committee have welcomed that outcome, and the committee commended Transport Scotland for the outcome achieved on admitted body status. Rightly, that has provided the reassurance to FETA staff that they fully deserved. There was much recognition of employees’ concerns about their pensions.

There were also concerns about health and safety. During the recent event with veterans of the construction of the Forth bridge, I met a former employee. South Queensferry resident, Alan Macdonald, who is now 77 but was a supervisor who worked for the bridge designers, described a discovery in the project’s south anchorage tunnel, which was one of many unexpected challenges during construction. As the Edinburgh Evening News reported, Mr Macdonald said:

“I saw bubbling coming up through the water in the bottom of the shaft. We collected a sample and took it back to the office. In our naivety we thought it’d be a good idea to see if it was flammable. We dropped a match in this glass jar and we just about blew up the whole office.”

I spoke to another person, who talked about handling explosives and being told not to get the material on their face, because it would blind them. The material was accessed from a small hut at the bottom of the hill, next to the river. Things have obviously moved on tremendously in health and safety, which is a key consideration in our moving forward in the way that I am describing.

We understand that the bill impacts on individuals. It was essential that FETA staff should receive assurances about their future. The Scottish Government acknowledges and greatly values the skills, knowledge and professionalism of FETA staff. I have assured all FETA staff that their jobs will be protected, through the process that is provided for in the Transfer of Undertakings (Protection of Employment) Regulations.
The committee’s report reflects the reassurance that has been provided to FETA staff in the bill and through the arrangements that the Scottish ministers have made on their behalf. The bill provides protection for FETA staff’s terms and conditions, through the application of TUPE.

On section 4, the committee commented on the impact that the dissolution of FETA might have on local accountability and local councils’ ability to influence regional transport matters. We recognise that stakeholders hold strong views on the issue, which we welcome; the committee’s endorsement of the Scottish ministers’ approach as striking the right balance is also welcome.

The Roads Scotland Act 1984 and Road Traffic Regulation Act 1984 create clear lines of responsibility for local roads and for trunk roads. The new Forth crossing, of course, will be a trunk road and motorway, responsibility for which properly will lie with the Scottish ministers. There is no other section of the motorway network in Scotland in relation to which councillors are in a position of authority.

The committee agreed with our judgment that the Forth bridges forum, which has council officer representation, is the most suitable vehicle for ensuring that local stakeholders’ interests remain at the core of the management and maintenance of the Forth bridges. The Scottish ministers will, of course, be able to receive representations from the public and councillors about those strategic routes. The approach will be no different from the approach that is taken elsewhere in respect of the trunk road network.

Transport Scotland and the winning contractor will build on the relationships that FETA has established. Regular and meaningful engagement with community councils and residents will take place—and indeed has already begun. That will be stipulated in the Forth bridges operating company contract. Such arrangements are a condition of existing operating company contracts elsewhere on the trunk road network; again, we build on existing practice.

The committee shares our view that an important facet of FETA’s work, which was highlighted by the chief bridgemaster, is the added value that is brought by contact with operators of similar structures elsewhere in the world. That will be evident later this year, when members of the International Cable Supported Bridge Operators Association arrive in Edinburgh. Transport Scotland is represented on a number of key national and international bodies, and I confirm that, to maintain the immensely valuable contact that I have described, the role of membership of appropriate national and international bridge bodies will pass to Transport Scotland rather than to a bridge operating company. Such an outcome fits well with the principles of the national roads maintenance review.

I thank the people who contributed on the issue and I look forward to hearing members’ opinions.

I move,

That the Parliament agrees to the general principles of the Forth Road Bridge Bill.

14:33

Maureen Watt (Aberdeen South and North Kincardine) (SNP): The Infrastructure and Capital Investment Committee welcomed the introduction of the Forth Road Bridge Bill and agreed to recommend to the Parliament that the bill’s general principles be agreed to.

The committee received evidence from only a small number of organisations. We thank them for their contribution to the scrutiny process and for assisting us in our deliberations.

The bill is short and technical, and it is an important element of the Scottish Government’s strategy to upgrade the Forth crossing transport network. As the minister said, its main focus is to pave the way for a single operator to carry out the management and maintenance of the Forth road bridge and the new Forth crossing.

The bill provides for the dissolution of FETA, which currently manages and maintains the Forth road bridge, and allows for the trunking of the Forth road bridge, which brings it under ministers’ direct responsibility. It also allows for the transfer of all FETA’s assets and liabilities to Scottish ministers and for FETA staff to be transferred into the employment of a new single bridge operator to be appointed by Scottish ministers. Each of those issues is addressed in the committee’s short stage 1 report.

Although the committee welcomes the bill, we note the concerns that were expressed about the consultation process during the bill’s development. Instead of carrying out public consultation on the bill’s proposals, Transport Scotland officials adopted a targeted approach to consultation, involving only organisations and community groups that it had identified as having a direct and local interest in the Forth road bridge’s management and maintenance, and stated in evidence that, given the bill’s relatively narrow scope and technical nature, that kind of approach was considered more appropriate than a wider public consultation.

Although the committee acknowledges the obvious value of close and continuous dialogue with stakeholders directly affected by a legislative proposal, it is concerned that restricting consultation to only those groups can potentially disenfranchise others who might have a legitimate...
and relevant interest. An example of the risks of such an approach was highlighted in evidence from the Union of Construction, Allied Trades and Technicians, which advised the committee that it had not been made aware of Transport Scotland’s limited consultation process and was therefore unable to participate. In fact, the union had a very clear interest in the bill’s proposals, given their impact on FETA staff.

The committee is aware that its session 3 predecessor committee, the Transport, Infrastructure and Climate Change Committee, raised similar concerns in relation to the Scottish Government’s failure to carry out a public consultation on the Abolition of Bridge Tolls (Scotland) Bill, which was clearly also related to the Forth road bridge.

Regardless of whether legislative proposals are considered to be of limited or narrow interest, it is expected that an appropriate and proportionate public consultation will be carried out to ensure that everyone with an interest can input their views. As a result, the committee in its report:

“calls on the Scottish Government to reflect on its approach to consultation in relation to future legislative proposals.”

The Scottish Government’s proposal to contract a single bridge operating company to manage and maintain the new Forth crossing, the Forth road bridge and connecting roads in the vicinity of the two crossings received strong support in evidence to the committee. The committee shares the view that contracting a single bridge operating company is the most appropriate and cost-effective approach to the management and maintenance of both structures and is also reassured that, under the new arrangements, the valuable expertise and experience of FETA staff will be available to the new operator, which will ensure a strong element of continuity.

Although content with the proposal for a single operator for both crossings, the committee considered it unfortunate that, with its valuable and extensive experience of and expertise in managing and maintaining the Forth road bridge, FETA was not able to be considered for the role of carrying out those operations for both crossings. However, as the minister has said, the committee was advised by the Government that if FETA had participated in a tendering exercise backed by Scottish Government funding, there was a very real risk of such a move being found in contravention of European Union state aid rules.

David Stewart: I am grateful for the member’s comments; she will have noticed that I intervened on the minister to raise that very point. Did her committee receive any evidence from the EU to suggest that state aid rules would be breached? After all, it is one thing to assume a breach and another to have physical legal advice on that.

Maureen Watt: The committee itself did not take legal advice but in all the evidence that we received we understood why the Government did what it did. The committee understands and acknowledges the significant risk in this regard and therefore accepts the Scottish Government’s judgment.

The committee considered it unfortunate that, as a consequence of the Scottish Government’s decision, there is no mechanism for assessing how the option of FETA taking on this role compares in cost-effectiveness terms with other options. However, we understood why in practice that was not possible.

The committee heard differing views on the most appropriate duration for the new management and maintenance contract. The Scottish Government’s proposal is for the contract to have a five-year duration plus add-ons that could take the term up to 10 years in total. However, FETA indicated in written evidence that it had a 15-year planning cycle for major maintenance and works programmes. FETA suggested that, in recognition of that, a minimum contract length of 10 years would be required.

Although the committee has no strong view on the optimum contract length, it recognises the importance of the contract duration being appropriate for the maintenance regimes that will be required. Therefore, the committee has called on the Scottish Government to provide further information on how its proposal to let the contract for five years, plus extensions, would fit with longer-term planned maintenance programmes of the type that are currently operated by FETA, which, as I said, cover 15 years.

On the issue of how the contract for the management of the Forth bridge and the new Forth crossing should be framed, the committee received written evidence from UCATT and Unite that made clear those unions’ expectation that the contract will make it clear that any companies that have been involved in the practice of employee blacklisting or tax avoidance will not be eligible to tender.

The Presiding Officer: You must wind up.

Maureen Watt: The committee was also keen to establish how the procurement process might provide a community value element and allow for the creation of professional and vocational apprenticeships and job opportunities for long-term unemployed people.

14:41

Elaine Murray (Dumfriesshire) (Lab): This is a relatively uncontroversial bill, although concern was
expressed to the committee about some issues, which might merit additional exploration at stage 2.

As the minister has described, the bill abolishes FETA, transfers its assets to Scottish ministers and designates the Forth road bridge as a trunk road, which is likely to be operated by a private sector operator who will be appointed by Scottish ministers. To that extent, it sets up a form of public-private partnership—I know that the party of Government was not keen on those when it was in opposition, but it seems to have come around to a different point of view in government.

As others have said, questions were asked about why FETA could not manage both bridges, instead of abolishing FETA and bringing the existing bridge under the control of Scottish ministers and Transport Scotland. That was FETA's preferred option, although Barry Colford said that, in view of evidence, it was preferable that a single authority should have responsibility for the management of both bridges. The minister and the convener of the Infrastructure and Capital Investment Committee have described the reasons why FETA's involvement was not appropriate, in relation to infringement of EU state aid rules and issues around value for money. On that latter point, I was slightly puzzled by the suggestion that it was impossible to prove FETA's value for money, as FETA has operated the current bridge for many years.

The convener has spoken of the concerns about the consultation process and the exclusion of UCATT. The unions that made representations were particularly concerned about the 70 or so staff who currently work for FETA, and wanted to ensure that they would be protected under the TUPE regulations, and also that there would be no compulsory redundancies. I am pleased that that has been guaranteed and that the operating company will join the Lothian Pension Fund, which means that employees will continue within their current pension schemes.

As the convener said, assurances were sought that no company that has been engaged in blacklisting workers because of their trade union membership or activity would be awarded a contract, and the committee received assurances that the contract will guarantee workers the right to trade union membership and collective bargaining. Labour would like the contract to go further by, as the trade unions suggested, excluding companies that are known to have practised blacklisting in the past.

The City of Edinburgh Council raised concerns about a couple of important issues. The first was that the compensation claims against FETA for construction work should not be transferred to it, as there were concerns—disputed by Transport Scotland—that the claims could run into millions. The committee received assurances on the record—which have been repeated by the minister today—that Transport Scotland and the ministers will inherit any claims. I believe that that has been sufficient to allay the council's concerns. However, if that is not the case and the issue needs to be addressed again at stage 2, I would welcome further communication from the council.

The transport convener of the City of Edinburgh Council, Lesley Hinds, also raised the issue of local accountability. Elected members of the local councils are currently represented on FETA, but they will be replaced on the Forth bridges forum by council officials. The committee raised that issue with the minister, who said that he had given consideration to the inclusion of elected members but felt that an arrangement that involved councillors sitting on a board that was looking after a project that was wholly the responsibility of Scottish ministers would be, in his words, “unique”. He was also unclear about what was being considered, with regard to which councils would be involved and whether the councillors who would sit on the board would be local members for the areas that are affected by the bridges or the transport conveners. He stated that the forum had been established to resolve issues that might arise both during and after the construction of the bridge and that, therefore, it was important to ensure that local community representatives had a say on the forum. However, he did not think that it was appropriate to add elected member representation.

In an unrelated session, the committee recently took written evidence from community groups regarding their relationship with Transport Scotland over issues arising from some of the current preparation and construction work. That suggested that the communities were not totally satisfied with the way in which Transport Scotland reacted to their concerns. There needs to be further discussion around the matter. I raised that when we discussed our stage 1 report, but I did not push it hard because, like the minister, I was not terribly clear about what representation was desired, whether the concern that had been expressed by City of Edinburgh Council was reflected by the other councils that currently had representation on FETA and whether they aspired to have elected member representation. If clarity can be achieved about what is wanted and if the councils that are currently represented on FETA would like the matter to be discussed further, I would be happy to take the matter up, through an amendment at stage 2, to allow further discussion with the minister. I felt that, in his response to the committee, he was not totally unsympathetic to the view; therefore, there may be ways in which we can raise the matter for further discussion later.
The committee was also assured that minimum standards on procurement, community benefit, apprenticeships and job opportunities for the long-term unemployed would be written into the contract. We were aware of the issue around the purchase of steel for the construction of the bridge and the fact that Scottish steel manufacturers have lost out to overseas competitors. Assurances regarding the future operation of the bridge are, therefore, welcome. However, the nature of those minimum standards and how employment opportunities will be achieved in practice will be important.

I realise that this is early days in the consideration of the bill. However, I would appreciate any light that the minister could shed on the process. I am sure that other members of the committee would, like me, also appreciate being kept apprised of any progress on that—particularly progress on the employment and blacklisting issues as we move towards the issuing of the contract. If there are ways in which the committee can examine some of those issues, I am sure that we would be interested in doing so.

Labour will support the bill at stage 1. However, I look forward to further discussion and clarification as the bill progresses, as there are one or two outstanding issues. There is an opportunity in the stage 2 process to go back to some of the issues that have been raised with the committee, using the amendment process to develop the arguments further to see whether there are ways in which those concerns can be addressed.

14:47

Alex Johnstone (North East Scotland) (Con):
Usually, when I am called to speak third or fourth in these debates the difficulty is that everything has been said already. I usually overcome that disadvantage by just disagreeing with everything that the minister has said. However, in this case I am unable to do that as I support the bill, and the Conservatives will vote in support of its general principles at stage 1.

It was interesting to go through the technicalities of the proposal, given that few of us, outside Government, thought much about the management of the new bridge when we were talking about its construction. I find myself fully supportive of the twin-bridge management strategy that the Government has adopted. Although I am aware that there are concerns over some issues, not least the state aid rules, I am able to say that I may have other reasons for supporting the strategy that the Government has adopted and, consequently, I maintain my support.

It is important that we use our road network efficiently. Change that allows us to take the Forth bridge away from the current arrangement under FETA, with the replacement crossing managed simply as part of our broader motorway network, gives us sound opportunities to manage our traffic in the future without some of the more difficult considerations that FETA occasionally led us towards. Some of us feel that it may deliver an advantage if, as is suggested, councillors are not directly represented on the new bridge management structure, given that council involvement in FETA led us at one point to a proposal for a £4 toll on the bridge. That was before Parliament got together in one of its moments of unanimity and decided to abolish the tolls altogether.

As we look forward to the new structure, it is important to acknowledge the work that has been done to protect the staff who currently work for FETA. It is very important to ensure that there will be a straight move for those who are currently employed and that the TUPE process will ensure that their jobs and terms are protected. It is also important to acknowledge that the pension liability will be transferred for those current employees to, I believe, the new company and any successor—I see the minister nodding to confirm that. As a consequence, no one will lose their job or their rights as a direct result of the transfer. However, it gives us the opportunity to be more efficient in how we manage the bridge in the longer term.

One of the key issues that was raised a number of times—I admit that the minister clarified it for us consistently—was the worry that FETA might leave liabilities with the City of Edinburgh Council for which the council might be responsible in future. The minister has taken every opportunity to reassure both the committee and the council that that is not the case. The minister’s announcement that he has now given the council a formal assurance that the liabilities have been transferred to Transport Scotland will take away one of the key concerns that was raised repeatedly.

Another issue that was raised was that of encouraging the representation of the bridge management on organisations for national and international bridge management companies. Considering the difficulties that were experienced with the first Forth road crossing, it is important that those with expertise work closely together so that they can learn from one another’s experiences and understanding. In his closing remarks, the minister might be able to give us an assurance that simply transferring that responsibility to Transport Scotland will not take the connection one step away from those who are responsible for the day-to-day management of the bridge. I look forward to hearing that assurance.

The final issue that I want to address is the duration of the contract that is likely to be issued. I
appreciate that a five-year contract with potential add-ons extending up to 10 years makes for a substantial contract that will attract interest and give the winner the opportunity to carry out their responsibilities properly and seriously. However, the suggestion that emerged in the evidence that there might be management cycles for the new structure extending to 15 years gives me cause for concern. I ask the minister to consider that issue during the rest of the bill’s passage to ensure that we do not undermine management’s confidence to get on and do work that is necessary.

That said, the Conservatives will support the bill at stage 1.

14:53

Gordon MacDonald (Edinburgh Pentlands) (SNP): As a former resident of South Queensferry, a town that sits in the shadow of two of the existing bridges over the Forth and the place where my sons grew up, I was pleased to see that the people who live and work there were not forgotten about when the new arrangements were being considered for the most cost-effective and co-ordinated approach to the management and maintenance of the new Forth crossing and the Forth road bridge.

The bill provides for existing employees to be transferred from FETA to the new contractor under the TUPE regulations. Although pension provision was not protected under those regulations, agreement has been reached for the continuation of existing pension arrangements for FETA staff.

The committee’s report quotes Transport Scotland officials, who stated in evidence:

“we will write it into the contract that the successful bridge contractor will apply for admitted body status. Essentially, that means that the staff’s pensions will remain unaffected.” —[Official Report, Infrastructure and Capital Investment Committee, 16 January 2013; c 1268.]

That ensures that the pensions of the existing 72 staff, 60 existing pensioners and other previous employees will continue to be part of the Lothian pension fund. I was able to ascertain during the evidence session on 16 January that Transport Scotland intends to ensure a continuation of that protection under any subsequent contracts in future years.

The winding up of FETA has resulted in a requirement for a new structure to allow local communities to engage with the bridge operators. The Forth bridges forum has been created to help manage operational and maintenance issues that emerge in relation to the Forth crossings and to maintain effective engagement with local communities.

Of the four local authorities that have current representation on the FETA board, only one—the City of Edinburgh Council—raised the issue that local councillors would not be involved in the new forum. The minister, Keith Brown, explained that, if they were, that would mean “putting in elected representatives who would not be responsible for the spending decisions.” —[Official Report, Infrastructure and Capital Investment Committee, 27 February 2013; c 1437.]

In their report, committee members agreed “that it would not be appropriate for the membership of the Forth Bridges Forum to include elected local authority representatives.”

The bill proposes that all assets and liabilities will transfer from FETA to Scottish ministers. Therefore, it was important to clarify the position regarding any potential liabilities relating to the building of the new crossing and the creation of new roads leading to the bridge, so that Edinburgh taxpayers were not left to pick up the costs.

The FETA representative stated that “FETA is liable for any outstanding costs that arise from the scheme. We have budgeted for liabilities of £623,000, which is in our accounts”; —[Official Report, Infrastructure and Capital Investment Committee, 6 February 2013; c 1336.]

and the Minister for Transport and Veterans said:

“We have said that we will take on the obligations and we have made that plain to the council.” —[Official Report, Infrastructure and Capital Investment Committee, 27 February 2013; c 1431.]

We have heard those reassurances again this afternoon.

The bill will give Transport Scotland, on behalf of Scottish ministers, responsibility for the operation and maintenance of the crossings. It is already responsible for more than 2,000 miles of trunk road and 2,007 bridges, including nine major bridges on the trunk road network, many of which are over estuaries or rivers. They include the Erskine bridge, the Kessock bridge, the Kingston bridge, the Skye bridge and the other two bridges that cross the Forth: the Kincardine bridge and—the newest of all—the Clackmannanshire bridge. This change to the management of the existing Forth road bridge and the new Forth crossing brings the responsibility for the operation and maintenance of the bridges into line with what already exists everywhere else in the country.

14:57

David Stewart (Highlands and Islands) (Lab): I welcome the opportunity to contribute to the debate, not least as a former member of the Forth Crossing Bill Committee in the previous session, which was chaired very effectively by Jackson Carlaw, with solid contributions from Joe FitzPatrick, who has now gone on to greater things. Looking back at the 20 or so hours of
evidence that that committee heard from various witnesses, including the then Minister for Transport, Infrastructure and Climate Change, Stewart Stevenson, and representatives from Transport Scotland, Friends of the Earth, FETA and the local communities, I suppose that, in a sense, it was

“history in the making ... the largest public sector infrastructure project since devolution.”—[Official Report, 26 May 2010; c 26567.]

I will make a few comments about the Forth Road Bridge Bill, and raise a few questions for the minister on issues such as consultation, staffing, finance and the environment.

As we have heard from previous speakers, the bill is simple, straightforward and clear, in that it is intended to make provision for a single bridge operating company to carry out the management and maintenance of the Forth road bridge, the new Forth crossing and the connecting trunk roads. We have also heard in evidence that the contract tender will be subject to EU and United Kingdom procurement law and that, due to its scale, it will be advertised in the Official Journal of the European Union.

I have a few questions for the minister. I ask again: why has FETA not been able to bid for the new contract on the basis that it will be extinct by the time the tenders go round? I suppose that it is difficult in some ways to compete with extinct bodies.

Maureen Watt: Does the member not realise that the expertise that FETA has gained in managing bridges will be transferred as all the staff will be transferred, so the knowledge and expertise that they have gained will be used in the new structure?

David Stewart: I totally agree with that point, and I am very pleased and positive about that aspect of the bill. My point is that there is no reason why FETA should not be able to bid for the project. I would develop that point if I had time.

The Scottish Government bill team’s supplementary report to the Infrastructure and Capital Investment Committee said:

“Ministers chose not to cost Option 3”—

which is delegation of the new crossing to FETA—

“due to the lack of an effective mechanism to assess VFM.”

Surely FETA has the best knowledge of value for money, as it runs the existing bridge. Surely there would be synergies in going from running one bridge to running a second bridge.

I ask the minister these questions again, too. Has there been specific legal advice around breaches of state aid rules, or is there an assumption by ministers that there will be a state aid breach? Why not expand FETA so that it can cover the new crossing, too? When will the tender documents be issued? What is the timescale for assessment and the decision on the winning bid?

We have already heard that there will be community benefit clauses around local employment and apprenticeships, which I very much support. I specifically ask the minister to clarify in his closing speech whether there will be an unsuccessful bidder premium for the new contract. He will know that, when the bids for the new Forth crossing were put in, the unsuccessful bidder got a £5 million unsuccessful bidder premium. Will that happen in the new contract?

Will there be a condition in the contract that specifies that the successful bidder will have to register employees in the United Kingdom for national insurance purposes and not outsource them? That has been a feature of outsourcing organisations working with other companies.

The chief engineer was quoted recently saying that the condition of the cables on the existing bridge has not materially diminished since 2008 and that they are not expected to lose more strength as long as the dehumidification systems function correctly. Does the minister agree with the FETA convener, who said that there was nothing to stop the bridge accommodating non-motorway traffic, farm vehicles, learner drivers and abnormal loads?

Can we reconsider the issues around consultation? There was some evidence that the Forth Crossing Bill in the previous session did not follow the Aarhus convention in respect of consultation. Notwithstanding that, I support the general principles of the bill.

15:01

Colin Keir (Edinburgh Western) (SNP): I will confine my comments to how the bill affects my constituents, particularly those in Queensferry, which will bear the brunt of the civil engineering on the southern side of the Forth. As Gordon MacDonald pointed out, the history surrounding the two present bridges makes them an integral part of the community of South Queensferry.

There will be many years of civil engineering and there will be some problems along the way. Recently, we have had problems with lorry traffic movements. I look upon what we may have to deal with in the near future as we move through the construction phase. In particular, the construction efforts that are required in Echline, Springfield and the Clufflats, which are more or less in the line of the bridge, will produce some major inconveniences.
I am delighted that, so far, there has been engagement with the local community, as Gordon MacDonald pointed out. Almost every month, issues are brought to my attention at surgeries and in my mailbag—they are usually something to do with the bridge. They concern the noise, what is likely to happen and how people will be affected in general. When I hold my surgeries in Queensferry in particular, those are the issues that come across my desk more and more often.

There has been a long-standing relationship between the local community, the community councils and other local groups, such as the bridge replacement interests group south. I am sure that BRIGS has appeared at the Infrastructure and Capital Investment Committee, which I should thank for its report, which is an excellent piece of work.

FETA has been a part of Queensferry for quite some time—it is a relationship that has grown and grown. Some people who live in the Ferry work for FETA. I am delighted with the arrangements that have been made to TUPE staff over to the new management company and with the pension arrangements that have been put in place. Those are welcome steps and will make the process a little bit clearer for those people who are going through it.

The regeneration—the new bridge—may be the catalyst that makes economic development more likely in the surrounding area. I am thinking about the future job and development prospects, particularly around the Port Edgar area. Now that we have the new education and tourism centre, if we could get something up and running at Port Edgar, that would make the area a catalyst for development in relation to employment and sports. It is something for the future.

I see that I am running out of time. I fully support the bill. If we can do something to progress the world heritage site application, so much the better.

15:05

Roderick Campbell (North East Fife) (SNP): Although I am not a member of the Infrastructure and Capital Investment Committee, I welcome the opportunity to make a brief contribution to the debate.

Construction of the replacement Forth crossing is well and truly under way, creating more than 1,000 jobs over the life of the project and many more in maintenance for years to come. The crossing will be an essential link in our national transport infrastructure. The bill lays down a strong foundation for the whole project, which I hope will deliver best value for public money at a time of declining block grants from Westminster.

The staff who were employed by the old bridge authority, FETA, will be transferred while retaining their employment and pension conditions. The Scottish Government will take over responsibility for FETA’s assets and liabilities. That is a fair and sensible way forward for the public and the staff.

Following its initial consideration of the bill, the committee said that it felt that the bill contains sufficient provisions to allow the Scottish Government to meet its objectives. I do not disagree with that, but it is worth noting that the committee’s report made a few suggestions that I hope the Scottish Government will take on board.

The first relates to the consultation process and the simple question of ensuring best practice by consulting as widely as possible. The trade union UCATT was not consulted during the early stages because I understand that only limited stakeholder participation was facilitated. Although I also understand the Government’s rationale for the course of action that was pursued, and I have no doubt that jobs and workers’ rights are protected by the bill, there are surely lessons that we can learn in that regard.

Another point is the importance of reassuring the City of Edinburgh Council that it will bear no liability for costs that are incurred during construction. The same should apply to Fife Council, if appropriate, and I would welcome the minister’s comments on that. Perhaps the issue is not relevant but I would still welcome his comments. Formal notification from the Scottish Government would help to remove any doubts about the position of the two local authorities in relation to the major construction project that is taking place within their boundaries.

Talking about the legislative provisions in a bill sometimes makes it easy for us to forget what the bill is all about. It is worth remembering how far we have come in recent years. Pre-2008, we had the Fife tax on people who were entering the kingdom of Fife, and people who lived in Fife had no reasonable way of avoiding the bridge tolls when they were on their way home. Today we have a toll-free Scotland, with one of our biggest infrastructure projects in decades under way right now, creating jobs and a precious new vital route connecting the north and south of Scotland.

We know that the current Forth road bridge, even if it is not deteriorating quite as we thought, cannot cope with the projected increase in traffic. The effects of a sixfold increase in bridge traffic over 50 years demonstrates why the responsible thing to do is to ensure that the infrastructure is in place to allow us to deal with unpredictable shifts in usage.

I am aware that some opposed the building of a new road bridge because they that felt traffic
would increase as a result. Others argued that abolishing the tolls in 2008 would lead to a massive increase in traffic. However, the official figures show that the average daily heavy goods vehicle traffic on the bridge was lower in 2011 than in 2003, and the average daily number of cars has remained virtually the same since 2001. The volume of all types of traffic, including public transport, is increasing in Scotland and all around the world, but there are still many communities for which public transport is not a convenient option. Although investing in greener public transport is, in many ways, the right way forward, it would be reckless to abandon motorists by neglecting to secure for the future the infrastructure that they need and depend on.

When the new bridge is complete, the existing Forth road bridge will be retained exclusively for public transport, pedestrians and cyclists. I am sure that we all recognise the benefits of making cycling and travelling by bus more attractive.

I welcome the bill and the committee's report, and I am confident that the new Forth crossing will bring enormous benefits to Fife and Scotland as a whole in the next century.

15:09

Helen Eadie (Cowdenbeath) (Lab): At their northern end, all three Forth crossings will land in the Cowdenbeath constituency, which I am privileged to represent. Immediately prior to being elected to the Scottish Parliament, I was the vice-chair of the Forth Road Bridge Joint Board, the parties to which were Fife Council, the City of Edinburgh Council, West Lothian Council and Perth and Kinross Council.

My preference would have been option 3. I endorse all the comments and the searching questions from Dr Murray and David Stewart. It is worth remembering that the legislation agreeing to the building of the Forth road bridge was passed as far back as 1947 but the bridge was not opened until September 1964. It is incredible to contrast the timescale for that crossing with that for the new Forth crossing. At that time, the new Forth road bridge was the longest suspension bridge in the world—an icon of Scottish engineering, as I am sure the new Forth crossing will be.

It is also worth remembering that the Forth road bridge was initially funded by the local authorities that I mentioned—namely Fife, Edinburgh, West Lothian, and Perth and Kinross—not by Scottish taxpayers. It was funded by those authorities and there was no funding from any Government.

The Forth Road Bridge Joint Board was dissolved and its assets, liabilities and responsibilities were passed to the Forth Estuary Transport Authority, which was created under the provisions of the Forth Estuary Transport Authority Order 2002. The bridge board did much to lobby for many of the improvements around the bridgehead area, and that was also an attribute of FETA as it became much more involved over the years.

The loss of FETA will be a loss to the entire transport infrastructure in the Forth bridgehead area. The creation of FETA marked a significant step forward in the efforts to tackle congestion on the Forth road bridge and to improve travel across the Forth. Maintenance of the bridge was always a top priority and FETA was always able to use revenues to fund public transport alternatives, road works, traffic management measures and other schemes that it felt would bring benefits to bridge users.

I have some questions that I would like to have answered. Why was Perth and Kinross Council not included in the forum that considered the future arrangements for the Forth road bridge, given that the council was part of the original bridge board? What shape will the future engagement with community councils and local elected members take? How meaningful will the consultation be?

We have heard a lot about consultation this afternoon, but communities have not really been consulted effectively across Scotland, even though so many people are dependent on the bridge. I also take a different view from the committee. I strongly support the view of the City of Edinburgh Council that there should be elected member representation on the Forth bridges forum. If the Government is intransigent on that key issue, it will smack yet again of a controlling and centralising agenda. We have seen that with the Scottish Police Authority and the Scottish Fire and Rescue Service Board; are we to see it again with this?

What arrogance it would be to keep the consultation so narrow, given that it was the hard-earned taxes of the ratepayers of Fife, Edinburgh, West Lothian and Perth and Kinross who raised the entirety of the finance to build the Forth road bridge. It is one thing to accept the judgment of a Scottish Government if it has had specific and crystal-clear legal advice on state aid rules, but neither the minister nor the convener of the committee has given any evidence to support their assertions—and they are assertions. Facts are facts, and that is what we need. The minister needs to answer the fair questions that have been put by David Stewart, who is absolutely right.

It is a good idea to include VisitScotland and Network Rail on the forum, but I hope that the minister will listen to what my colleagues and I have been saying.
David Torrance (Kirkcaldy) (SNP): The Forth road bridge is one of the most iconic structures in Scotland and it is also the second longest single-span suspension bridge in the United Kingdom. The bill proposes to put management for the Forth road bridge and the new replacement crossing under a single bridge operating company. The benefits of doing that include financial and operational efficiencies and a strategic and collaborative approach to the management and maintenance of both bridges. Further, the bill proposes to transfer the current employees of the Forth Estuary Transport Authority to the new company, ensuring that their experience is retained.

A unified management approach is key to the continued operation of one of the east coast’s most vital transport structures and, in particular, the creation of the Forth replacement crossing. As MSP for Kirkcaldy, I see the replacement crossing as being vital for growth and for transport links. Locally, the new crossing is welcomed most by businesses, as it will remove all uncertainties in the business community. Business know that in future there will be excellent transport links for the whole of Fife, the east coast and beyond, which will allow them to grow and expand to provide jobs and strengthen the local economy.

Commuters will also have reason to celebrate the new crossing. Transport Scotland has confirmed that pedestrians, cyclists and bus users will see no change as a result of the bill, as the new operator will carry out the same functions as the present one. Once the replacement crossing opens, the Forth road bridge will be used exclusively by buses, taxis, cyclists and pedestrians, which will provide a real benefit to commuters on both sides of the Forth. Having a dedicated crossing will reduce travel times and make journeys much easier and more pleasant, and it is hoped that it will prove to be a boon to tourism in Fife by encouraging more tourists to venture into the region.

The replacement crossing has already provided benefits for Scotland. It is currently progressing on time and on budget, and it now directly employs 1,200 people. Many more people will be indirectly employed in the next three and a half years until the project’s completion, and there will be many opportunities for the local and national economies.

Last December, motorway management technology was implemented on the M90 in Fife, which is the first time that an intelligent transport system has been used in Scotland. The system creates a dedicated bus lane and uses variable mandatory speed limits during periods of congestion to cut traffic jams and make journey times more reliable. That is another early benefit of the crossing, especially as it will greatly help a very busy section of our transport network.

The replacement crossing has generated 110 places for vocational training and for the long-term unemployed, and community benefit clauses will deliver an annual average of 45 vocational training positions, 21 professional body training places and 46 positions for the long-term unemployed. The replacement crossing contract is the first contract to demand that subcontracts are advertised on the public contracts Scotland procurement portal, which means that all job opportunities must be advertised in local jobcentres. Already, 63 per cent of subcontracting opportunities and 89 per cent of supply orders have been awarded to Scottish firms, and the final stages of assembling the steel components will be carried out in North Queensferry and South Queensferry.

The Forth Road Bridge Bill will ensure the continuation of the effective management of the Forth road bridge and the replacement crossing, and of the benefits that those essential transport links provide now and in the future. I am happy to support the Government’s bill at stage 1.

The Deputy Presiding Officer (John Scott): We move to closing speeches, and I call Alex Johnstone.

15:17

Alex Johnstone: Thank you, Presiding Officer—here we go again.

Quite a few interesting points have been made, but it would be remiss of me not to emphasise, as other members have, the economic importance of a reliable crossing over the Forth. The problem with the old Forth road bridge is not only the difficulties that are associated with its structure but the fact that its design means that it is often closed, certainly to high-sided vehicles, as a result of bad weather.

Although we have heard that the number of HGVs crossing the bridge has declined slightly, I emphasise that the average weight of such vehicles has perhaps slightly increased, which indicates that the bridge is still vital to Scotland’s long-term economic wellbeing. The economic centre in the east of Scotland relies heavily on the fact that it can draw its labour from the area north of the Forth, which is why the councils in not only Edinburgh and Fife but Perth and Kinross—as Helen Eadie pointed out—contributed to the cost of constructing the first bridge. However, I dispute Helen Eadie’s claim that the bridge was not funded by taxpayers’ money, although she later conceded that it was. She seemed to think that the money came from councils alone without that level of accountability.
It is important that we get the management of the new crossing right, which is why I support the terms that the bill contains.

**Helen Eadie:** I stand to be corrected, but I think that only the councils funded the bridge, through long-term loans.

**Alex Johnstone:** Yes indeed, but councils are funded through taxpayer contributions; I am afraid that that is how the world works.

It is vital that we ensure that there are good relationships between those who run the bridge and those who live in the surrounding communities. We have heard that the current bridge operator and its predecessor have had good working relationships with the communities north and south of the Forth. However, as a parallel activity, the committee has taken evidence from those communities about their experience of the construction project that is under way. Although perhaps not everything is going according to plan, everybody is working hard to ensure that there are not the problems associated with the previous year’s construction being carried over into the next year’s construction. It is important that the bridge operator remains a good neighbour, and the fact that many staff will be carried over from FETA to the new bridge operator will give us the opportunity to ensure that that good relationship continues over time.

The final thing that I want to mention—again—is the issue of representation in bridge management. Concerns have been expressed by members on the opposite side of the chamber in particular that elected members will no longer be represented in bridge management. I, too, have concerns about that issue. I jokingly mentioned earlier the proposal for a £4 toll. However, what worried me about that proposal was that, at the time, it was proposed almost as a proxy for the city entry charge. As a result, those who cross the bridge would have been put at a disadvantage by a political priority that should have nothing to do with crossing the Forth. There are those in Edinburgh who, if they had been given the opportunity to influence the design of the bridge, might have included a drawbridge section so that they could have wound it up when they decided that enough people had crossed.

**The Deputy Presiding Officer:** You must wind up, too, please. [Laughter.]

**Alex Johnstone:** I want the new bridge to be available to the people of Scotland so that they can develop the economic prospects of the east of Scotland effectively to the benefit of us all. I support the bill and will vote for it at decision time.

15:21

**Richard Baker (North East Scotland) (Lab):** I think that Mr Johnstone spent some time winding up at the end of his speech.

This has been a useful debate on a bill that is limited in scope but which concerns a very important issue, because it is about securing the best stewardship in the public interest of both the existing Forth road bridge and the new replacement crossing, which will also be a crucial part of Scotland’s transport infrastructure and vital to our economy in these challenging times, as many members have said. The management of the bridge has not been the issue of greatest controversy around the new crossing; the focus of that has clearly been the Scottish Government’s inability to secure the new bridge in a way that would have ensured maximum economic benefit for our economy and support for local firms. However, that issue will not be addressed by this bill. We look to the long-awaited procurement reform bill for reassurance that those lessons have been learned by ministers. I hope that Mr Brown will display just now that those lessons have been learned.

**Keith Brown:** How would Richard Baker’s party, which never did this when it was part of an Administration, have directed the business to a Scottish company? How would it have achieved that?

**Richard Baker:** We would not simply have given the whole contract for the construction of the bridge to one firm and then taken a hands-off approach to any of the subcontracting work. Ministers had available to them several ways of pursuing better procurement of the building of the bridge and greater economic benefit for Scotland as a whole, but particularly for the area around the bridge. Clearly, though, ministers must take up that issue in the procurement reform bill.

The Forth Road Bridge Bill is important in itself. The committee looked carefully at the key issues. I congratulate the convener and committee members on their scrutiny of the bill, which was diligent and effective. We have heard of a number of significant issues that are highlighted in the committee’s report. The committee is critical of the limited scope of the consultation on the bill, to which Roderick Campbell referred. That meant that, for example, the Union of Construction, Allied Trades and Technicians was not able to take part in Transport Scotland’s engagement process.

That is a crucial difficulty, because responsibilities that currently lie with FETA are to be transferred to a private operator. As UCATT has described,

*FETA was a not for profit company and enshrined democratic accountability, by having a board with elected
representatives making decisions. Clearly, the decision to privatise the operation of the bridge management and maintenance will end this culture and organisation.”

The committee was also concerned about that issue and stated in its report that it was

“unfortunate that there was no mechanism for an assessment to be made of how Option 3—”

retaining FETA as the operator—

“compared with the other options in terms of cost effectiveness.”

A number of members have referred to that point, including my colleague David Stewart. However, I would go further than that, as members may imagine, in that I believe that it is another indication of a worrying default position of the Government to move service provision into the private sector when more effort could be made to retain services in public control.

Bruce Crawford (Stirling) (SNP): Will the member take an intervention?

Richard Baker: I am afraid that I am struggling for time.

We are where we are with this bill, so the crucial issue now is that the new operator works in the best interests of the public. How the FRB and FRC maintenance contract is procured is therefore very important. As I have said, it is important that lessons are learned from the mistakes that were made in awarding the contract for the construction of the Forth replacement crossing.

I turn once more to one of the submissions to make key points for ministers to consider, this time from my own trade union, Unite, which is clear in its view that the overarching future procurement agenda in Scotland should

“shift focus on moving away from lowest price tender to quality and sustainability which largely benefits people, not profit in public procurement.”

Unite makes the important point that companies that are engaged in blacklisting should be barred from tendering for public contracts in Scotland. I hope that that position will find favour with ministers, and I note that Mr Brown highlighted to the committee the Scottish Government’s concerns over that pernicious practice.

The final issue that I will touch on, which will also be a matter for procurement of the maintenance contract, is how transparency and accountability for this important management function are to be secured for the future. I understand that currently agendas and minutes of meetings are matters of public record. We must ask how that kind of transparency can be achieved in the future arrangements and, although ministers have ruled out councillors being members of the bridge users’ forum, nothing has yet been put in place to ensure the required level of dialogue between them, the contract holder and the relevant local authorities.

As my colleague Elaine Murray indicated, we may well need to return to issues after further discussion with relevant local authorities. Helen Eadie also raised concerns. We have a number of anxieties about the bill that ministers will need to address at stage 2 and we will certainly test a number of those arguments further as the bill progresses. However, as Dr Murray made clear, those concerns are not sufficient for us not to agree with the committee’s conclusion that the bill should be allowed to progress to stage 2, to allow further debate on the measures and the legislation. That view informs how we will vote on the bill and we look forward to debating the important issues further in the weeks ahead.

15:27

Keith Brown: I thank all members for their contributions to the debate. We will consider their comments fully and respond to the committee’s points in writing. I will try to answer some of the questions now. I am pretty sure that I will not be able to get through all of them, but I will be happy to answer in writing any further questions that members put to the Government or officials.

A number of people made points about consultation. I will put the record straight: we have consulted those who are most directly affected. The trade unions that have been mentioned, in particular UCATT and Unison, were contacted prior to the original announcements and invited to all FETA staff meetings that were arranged between Transport Scotland, Scottish Government human resources and Barry Colford, the bridgemaster. Three trade unions in particular engaged through transition officials: UCATT, Unison and Unite. Transport Scotland arranged face-to-face meetings at that time for officials from all three unions and FETA, although not all trade union officials attended. There has been substantial contact, but I will take on board some of the points that have been made.

Elaine Murray made a number of points on which I am happy to provide some reassurance. I also want to address the point about representation, which a number of members raised. Helen Eadie pointed out that the original bridge was funded largely through loans that were raised by councils. It was quite right that those councils were the direct point of accountability. However, it is also the case that a commitment was given to stop the tolls once the capital costs were paid off. As I understand it, they were paid off in the mid-1990s, yet the tolls continued to be charged for many years and were the source of some of FETA’s funding. Just as it was right that
councils were accountable for the money that they raised, it is right that Scottish ministers are responsible for the money that is being spent on the new bridge. Of course, the maintenance of the existing bridge is funded directly through Scottish ministers, so it is right that that should be the level of accountability.

As I said, the bridges will be fully integrated into Scotland’s motorway and trunk road network. The Forth road bridge, the staff who currently maintain it and—I underline this point—their pensions and Transfer of Undertakings (Protection of Employment) Regulations terms are going to be safeguarded in the process.

**Helen Eadie:** If the minister desires to have the full co-operation and involvement of local people and it is about economic benefits, social justice and social involvement, surely there must be partners on board. After all, we are talking about a forum, not a decision-making body. There is a difference between the two, and I ask him to please reconsider the matter.

**Keith Brown:** I have considered and reconsidered the matter as representations have been made. We should think again about the points that have been made by the City of Edinburgh Council, which remains the only council to have made representations on having further representation on the forum. I have not had the same representations from Fife Council, West Lothian Council or Perth and Kinross Council. In fact, the City of Edinburgh Council was unable to say what the level of representation should be or whether any of the other councils supported its position. It has made representations about obligations in respect of previous work on the A9000, said that we should take on those responsibilities, and pointed out that the Government is taking on responsibilities. Therefore, we should take on the accountability as well, not the councils. It wanted to hand over responsibility to the Government, and I have said that we will take that on. That responsibility should be reflected in the democratic arrangements, which is what we intend.

It seems to me that the point that Alex Johnstone made in relation to the international bridge organisations is absolutely right and that the people who will get most benefit from that will work directly on the bridge. I will check that further, but it seems absurd not to have those people directly involved in that process.

**Dave Stewart** made a number of points. He mentioned that we should not just make assumptions about the legal position. We do not do that. We do not pluck such things out of the air. We have advice, we have considered the issue, and the position has been given.

Dave Stewart also raised the question whether there should an unsuccessful bidder premium. There will be no unsuccessful bidder premium. I think that he also made a point about maximising the use of the existing bridge. We will certainly do that, and I am happy to provide more information on that in writing.

I simply disagree with some of the points that Helen Eadie made. The first speech that I made in the Parliament was on abolishing the existing tolls. Alex Johnstone mentioned the idea of increasing tolls to £4 and recoiled in horror. Perhaps he should have recoiled in horror at the Skye bridge tolls, which were sky high. I am very proud to say that, to this day, I have still not paid the fine from my conviction for refusing to pay those tolls. That shows that, given the opportunity, it can seem very easy to draw on an income stream and it is very hard to refuse that, as people should have done in the 1990s to keep faith with the Government’s promise that the tolls would stop being applied once the capital costs of the Forth bridge were paid. I am sure that, even now, had it not been for the actions of the Scottish Government, we would still be paying the tolls for the Skye bridge and would be a long way from seeing its capital costs paid off.

The committee’s report explains that there are various community engagement requirements and that they are in the process of being put in place or are being developed. It expressed views on membership of the forum. In my view, the preferred outcome will be achieved without the loss of democratic accountability.

It is true that the next generation of trunk road operating company contracts that are currently being rolled out has been designed to positively seek value for money. I think that Alex Johnstone made that point.

Alex Johnstone asked what the cost would be if we did not have the new bridge. The cost would certainly run into billions of pounds to the Scottish economy. I think that that cost would be around £600,000 a day if the existing bridge was out of commission, so it is absolutely right that we continue with the new bridge. One or two members have mentioned that. It is not the case that the work that is being done on the cables on the existing bridge obviates the need for the new bridge. The case for the new bridge was not predicated solely on the problems with the cables. The current bridge reached its design capacity many years ago and is currently taking more traffic than it was designed to take. The case for the new bridge is therefore made.

I made a point about the existing contract for the bridge, which was to a consortium that involves Scottish companies. Beyond that, of course, there is the chance to have commercial arrangements
for subcontracts. Richard Baker’s assertion that it should have been broken up into different contracts fills me with horror.

We have ensured that an original budget of between £1.7 billion and £2.3 billion has now been reduced to around £1.4 billion to £1.7 billion. The project is on time.

Richard Baker: Will the minister take an intervention?

Keith Brown: I am sorry, but I do not have much time left.

We do not have a cost or time overrun, and junction 1a has been completed on time. That seems to me to have been the most effective and efficient way of arranging the contract, and it is perhaps a shame that previous Administrations did not take the same approach.

Operating company contracts were, of course, let by the Labour Party as well. It is as if the process is new and that it is not the case that previous trunk road contracts were let in the way that we decided. That was how it was done before, going back to the 1990s, and the process was carried on by the previous Labour and Liberal Democrat Governments. We are continuing that process. We have a very well-developed network of operating companies that can take on such work, but we accept that those who have worked on the Forth road bridge for many years have particular expertise. That is why we are defending their rights under TUPE and why we have asked that it be an obligation for the new contractor to have admitted body status in the Lothian Pension Fund. To answer the point that Alex Johnstone raised, that obligation is taken on by the Government, which acts as the guarantor. TUPE obligations will, of course, continue when subsequent contracts are let.

I am pleased that there is general support for the bill in those regards. I will seek to answer the other questions that members have raised, and I hope that that support continues right through stage 2 and until the bill is passed.
Minister for Transport and Veterans  
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24 April 2013

Dear Maureen

Forth Road Bridge (Scotland) Bill – Follow up to Infrastructure and Capital Investment (ICI) Report and Stage 1 Debate

I am writing in response to the Infrastructure and Capital Investment (ICI) Committee’s report on the Forth Road Bridge (Scotland) Bill, and following the Scottish Parliament’s Stage 1 Debate on the Bill.

I am grateful for the work of the Committee, and wish to put on record again my thanks to all those who have contributed thus far to this process.

In its Report published on 18 March 2013, the Committee made a number of comments, requests for further information, etc. Annex A provides a detailed breakdown of topics raised, and my response to those. Annex B does likewise in respect of Parliament’s Stage 1 Debate on 26 March 2013 when the principles of the Bill were agreed to. During the debate, issues outwith the scope of this Bill were raised, and I have not commented on the majority of those; for example, funding associated with construction of the Forth Road Bridge.

Scottish Ministers undertake to address the Committee’s comments, as appropriate, and I hope the information below illustrates a thorough and comprehensive consideration of how best to take forward these matters.

I also attach copies of correspondence between myself and Sue Bruce, Chief Executive, City of Edinburgh Council (CEC) about liabilities which I referred to in my speech during the Stage 1 Debate.

KEITH BROWN
## Summary of Stage 1 Infrastructure and Capital Investment (ICI) Committee Report and Views; and Response from Minister for Transport and Veterans

<table>
<thead>
<tr>
<th>Issues and ICI Committee View (including stakeholder views) expressed as a Concern, as Content or a Request</th>
<th>Response of Minister for Transport and Veterans</th>
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<tbody>
<tr>
<td><strong>ISSUE:</strong> Purpose of Bill and general principles</td>
<td>I welcome the considered and fair assessment of the Bill and evidence by the ICI Committee and its support for the Bill’s principles and provisions.</td>
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<tr>
<td><strong>Content:</strong> The Bill’s provisions are sufficient to allow the Bill objectives to be met</td>
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<td><strong>Content:</strong> That the general principles of the Bill be agreed to.</td>
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<td><strong>Issue:</strong> Consultation</td>
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<td><strong>Concern:</strong> That consultation was too narrow, and as a result excluded some organisations, particularly a trade union.</td>
<td>It is important to recognise that those directly affected by the Bill have been consulted in person, by correspondence, or by 'phone, and that this interaction began prior to the initial Ministerial announcement, has continued throughout the process, and will continue via the Forth Bridges Forum, the terms of the proposed Forth Bridges Operating Company (FBOC) Contract, and Transport Scotland’s (TS) routine contact with communities and local authorities. The Committee acknowledges the value of close and continued dialogue, and I believe that my actions and those of TS have been in line with this principle.</td>
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<td></td>
<td>The Bill Team followed the Scottish Government (SG) guidance on consultation which explains that “Individual teams will, however, make the decision about whether a consultation exercise is required at any particular point, depending on the particular circumstances of their policy area.”</td>
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TS has noted the Committee's comments regarding consultation.

Ministers and officials have met with the FETA Board to discuss the issues. In February 2012 and July 2012, updates were given to FETA staff, with Unions also invited to attend. TS attended the FETA Board in December 2012 to update them on the Bill and proposed arrangements, and a factsheet of Q&A was issued to staff. In February 2013, TS wrote to FETA to confirm that it is content to meet with Staff at any suitable time, noting that fortnightly FBOC Contract meetings take place, before and after which the Special Projects team leader would be available.

I know that TS would reject, in particular, the suggestion that it did not communicate with UCATT. Immediately prior to the original announcement, union representatives were phoned by senior TS Staff, and invited to FETA staff meetings, arranged between TS, SG Human Resources (HR), and the FETA Bridgemaster. These took place on 23rd and 24th November 2011. On 8 Dec 2011, union officials were invited to attend meetings with, TS and Scottish Government HR in a Q&A session with FETA staff.

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<th>Issue: Management and Maintenance of the Forth Road Bridge</th>
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<td><strong>Content:</strong></td>
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<tr>
<td>(i) That single Bridge Operating Company is most appropriate and cost effective approach</td>
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<tr>
<td>(ii) That the valuable expertise and experience of FETA staff will be available to the new operator, hence continuity.</td>
</tr>
</tbody>
</table>

I welcome the support of the Committee, and other Councils on this position.

The Committee will also wish to note that TS (via its appointed Consultant) and in conjunction with FETA staff and other stakeholders, is undertaking a substantial exercise to gather a wealth of information about FETA’s operations, management, and maintenance, as well as its inspection regime to build a comprehensive picture prior to the tendering exercise, and for incorporation into the FBOC Contract. TS’s own experience of managing and maintaining the rest of the trunk road network, including major Bridge structures, is also being factored into the FBOC Contract.

<table>
<thead>
<tr>
<th>Issue: Management and Maintenance options considered by the Scottish Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>I acknowledge that “Option 3” was not costed, but remain of the view that it was not feasible.</td>
</tr>
</tbody>
</table>
Concern:
(i) Option 3 (delegating responsibility for the new Bridge to FETA, in addition to the existing Road Bridge) was not costed
(ii) FETA was unable to or prevented from bidding for the Twin Bridge Contract.

Options were considered that would have involved FETA having responsibility for managing and maintaining the new bridge, but none were considered feasible. There was insufficient evidence to support Value for Money focus within FETA, and therefore no mechanism to extrapolate how FETA would achieve Value for Money in a twin bridge strategy. Given that the new route is a motorway and the new bridge is a wholly different type, a very great burden would have been placed on FETA.

If responsibility for managing the twin bridge strategy had been delegated to FETA, and without market testing, this would have been perceived as uncompetitive. It may also have created uncertainty for FETA staff, as the decision would potentially have been open to challenge. Delegating the responsibility to FETA, does not provide for market testing.

In evidence to the ICI Committee, the Chief Bridgemaster acknowledged that while FETA’s capital and revenue works are tendered for, £3 million of its revenue cost does “not go out to competition.” (Col 1340, 6 February 2013.)

There are also significant potential benefits of a FBOC Contract
• Market testing is the only way to ensure value for money.
• A competitive tender exercise will be held for one contractor to manage and maintain both the Forth Replacement Crossing and Forth Road Bridge
• Post-construction, the management and maintenance of the new bridge must be undertaken to the highest standard, provide VFM and be fully co-ordinated with the management and maintenance of the existing Forth Road Bridge, in its new capacity as a dedicated public transport corridor.
• Projected savings of £1.2m per annum by managing and maintaining both bridges and network connections together.

Sub-issue - FETA and State Aid

Content: That Scottish Government judgement that State Aid rules could

Scottish Ministers welcome the Committee’s acknowledgement of the SG’s appropriate assessment of risk meant that the twin Bridge strategy of a single contractor managing and maintaining both bridges should be the preferred Option, and that FETA could not bid.
be contravened was correct.

In order to establish and ensure VFM, a decision was taken to have a competition for the right to manage and maintain the bridges. Although the possibility of FETA competing for that right was considered, it was discounted due to procurement and State Aid considerations arising as a result of FETA’s public funding.

<table>
<thead>
<tr>
<th>Issue: Duration of management and maintenance contract</th>
</tr>
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<tbody>
<tr>
<td><strong>Request:</strong> Committee took no definitive view taken on different opinions presented by FETA and TS, but asked TS to provide further information on how the 5 year plus extensions model fits with the FETA longer term planned maintenance</td>
</tr>
<tr>
<td>Although the Contract <em>may</em> last only 5 years, there will be options to extend the contract up to 10 years. A potential first contract extension of two years should provide extra security, and a twenty-four month notice period of any extension will also operate, as happens elsewhere on the Trunk Road network.</td>
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<tr>
<td>With regards to the longer term planned maintenance, it should be noted that there is, in fact, a <em>permanent</em> client: Scottish Ministers and that TS will provide the longer term, strategic, oversight that is, understandably, being sought. FETA’s 15 year rolling programme will transfer to TS and continue, and, as Bridge maintenance staff will TUPE transfer to the new FBOC, in-house knowledge will be retained.</td>
</tr>
<tr>
<td>Any Major Works contract has to be carefully drafted, and it is therefore possible for any replacement FBOC to pick up where one leaves off. TS will also have careful oversight and an ongoing monitoring role of any long term contract for the Road Bridges to ensure that the completed works match the initial tender.</td>
</tr>
<tr>
<td>FETA will, until dissolution, continue to procure works, including Design work for major maintenance schemes, and will work with TS to have contracts that can be portable between owners.</td>
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<table>
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<tr>
<th>Issue: Development of Draft Contract.</th>
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<tbody>
<tr>
<td><strong>Content:</strong> That the contract is being taken forward to a high standard in respect of tax avoidance and</td>
</tr>
<tr>
<td>I welcome the Committee’s response that the Contract is being taken forward in an appropriate manner.</td>
</tr>
<tr>
<td>At the time of the publication of the FBOC contract, the SG will ensure that the tender process and the Contract will comply with all current legislative requirements of relevant Contract law and regulations, as well as best practice in terms of policy, promoted by the SG itself.</td>
</tr>
</tbody>
</table>
blacklisting.

| The contract will contain provision for ethical sourcing practices. This means that freedom of association and the right to collective bargaining are respected, and therefore:  
| • workers having the right to join or form trade unions of their own choosing and to bargain collectively  
| • the employer adopting an open attitude towards the activities of trade unions; and  
| • workers’ representatives are not discriminated against. |

| Sub-issue: Vocational or professional apprenticeships and job opportunities for long term unemployed people  
| Content: That the contract is being taken forward to a high standard in respect of community value element (jobs apprenticeships, vocational opportunities)  
| The new FBOC will be accountable to Scottish Ministers, with the contract stipulating community engagement requirements. In line with previous TS contracts, the contract will specify in the Community Benefits section requirements on bidders in respect of local jobs and apprenticeships, such as:  
| • an apprenticeship or traineeship with the operating company for all new entrants  
| • staff training to SVQ and/or professional standard  
| • work experience placements.  
| The mix of benefits within the FBOC contract should provide both stability and development opportunities for existing staff, alongside fresh opportunities for new recruits. TS will be engaging with FETA staff and local groups on this matter.  
| The Equality Impact Assessment accompanying the Bill made plain that community benefit clauses to support employability and targeted recruitment with a focus on supporting young people would feature in the FBOC  
| The Contract will stipulate a duty for the FBOC to consult local people and hold a set number of meetings each year, and also to engage in projects with schools and colleges. Our benchmark will be FETA’s existing arrangements, and Scottish Ministers will expect to match, and ideally improve, upon those. |

| Issue: Trunking the Road  
| Content: Committee notes that trunking is essential if key objectives  
<p>| I welcome the Committee’s acknowledgement of the key principle of trunking which is fundamental to facilitating the Bill’s objectives. |</p>
<table>
<thead>
<tr>
<th>Issue: Transfer of Property and Liabilities</th>
<th>I welcome the Committee’s acknowledgement of my clear statement to the Committee on the issue. However, in response to the Committee’s request, I wrote to the City of Edinburgh Council (CEC) to provide the assurances sought in respect of the A8000/M9 Spur works, and am writing on similar terms to Councillor Lesley Hinds, CEC Convenor of the Transport and Environment Committee. For further clarity, all valid claims / costs relating to the M9 Spur arising from the purchase of land and settlement of Part 1 claims which the City of Edinburgh Council would meet on behalf of FETA will become - if not already settled at the point of dissolution - the responsibility of Scottish Ministers. FETA is grant funded by Transport Scotland whose officials are in regular contact with FETA management about FETA’s spend and its budget. Liabilities in respect of the A8000/M9 Spur are part of that ongoing budget monitoring process, with provision already allocated for liabilities for 2013/14 and 2014/15. Transport Scotland Officials will continue to work, within an agreed timeline, with FETA, and the City of Edinburgh Council, to ensure that FETA’s liabilities are properly accounted for, for the purposes of the transfer. Due to the nature of the claims involved and time required for their resolution, this timeline would extend beyond the passage of the Bill. Future funding allocations of £93K - as forecast by City of Edinburgh Council itself - provide for the associated claims and costs. Scottish Ministers are content that Section 2 of the Bill makes comprehensive provision for the transfer of FETA’s liabilities.</th>
</tr>
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<tbody>
<tr>
<td>Concern: That the Scottish Government had overlooked the concerns of the City of Edinburgh Council in respect of liabilities which may fall to the Council, and that the Bill may not satisfy these concerns.</td>
<td>Content: Clear statement by Minister that Scottish Ministers will take responsibility. Request: A formal communication between SG and CEC that there will be no liability on Council and that this formal communication be issued to the Council before the Bill completes its parliamentary passage.</td>
</tr>
<tr>
<td>Issue – Transfer of Staff</td>
<td>Ministers and TS are very appreciative that the approach has been commended, and inclusion of the provision within the Bill on TUPE provides the most appropriate mechanism for the transfer of FETA’s liabilities.</td>
</tr>
</tbody>
</table>
“commends” TS for its work to ensure a satisfactory outcome on pension arrangements, and more broadly on TUPE and staff transfers for protection of Terms and Conditions.

Ministers agree that the Bill must provide adequate protection for all staff transferring to the new Forth Bridge Operating Company, both in terms of pensions and Transfer of Undertakings (Protection of Employment) (TUPE), and TS will continue to offer staff maximum support and to work closely with bodies representing staff interests during the transition and beyond. TUPE is the strongest available legal protection in such a situation.

The skills, knowledge and professionalism of FETA staff is greatly valued by the SG and I have assured all FETA staff that their jobs will be protected.

There are 72 staff employed by FETA for bridge maintenance, traffic management, administration and it is estimated that the FBOC will require in the region of an additional 20 employees.

Sub- Issue: Pension protection must be adequate for those existing and former employees of FETA

**Content:** As above

FETA staff will be able to continue with their current Local Government Pension Scheme. The FBOC will be required to apply for admission to the Lothian Pension Fund (LPF). That requirement will also apply to any subsequent contractors. Scottish Ministers will act as a Guarantor.

It is important to note that FETA staff raised this issue as a concern, and Scottish Ministers and TS responded to that concern. This is a practical example of how a narrow consultation can provide the appropriate focus required.

As the Lothian Pension Fund submission to the Committee explains, “a formal legal agreement will be drafted to encompass all these points.”

TS will continue to work with the Lothian Pension Fund over access for the new FBOC.

**Issue: Local Accountability**

I welcome the Committee’s view that the inclusion of Local Authority officials on the Forth Bridges Forum is an appropriate level of input, and note that no changes to the Forum membership has been recommended. The presence of officials provides sufficient local
<table>
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<tr>
<th>Content: The proposed Forum membership and arrangements are sufficient and appropriate</th>
<th>The proposed Forum membership and arrangements are sufficient and appropriate accountability for those Councils whose transport policies are affected by Bridge traffic. The Roads (Scotland) Act and Road Traffic Regulation Act create clear lines of responsibility for local roads on the one hand and trunk roads on the other. The new Bridge is a trunk road and a motorway, responsibility for which is with Scottish Ministers. Scottish Ministers will be democratically accountable for the strategic road corridors.</th>
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<tr>
<td><strong>Issue: Sustainable and active travel</strong></td>
<td>I welcome recognition by the Committee that there will be no noticeable change to users, and accepts need to retain existing arrangements for transporting cyclists and pedestrians when weather prevents crossings, and impact on them more generally. TS will incorporate commitment to maintain arrangements for pedestrians and cyclists into the new FBOC.</td>
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<tr>
<td><strong>Content:</strong> Contract arrangements to continue</td>
<td></td>
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<tr>
<td><strong>Issue: Suicide prevention issues</strong></td>
<td>I welcome the Committee’s support for our commitment in respect of this topic, as described in TS’s Special Projects team leader’s letter of 5th March 2013 to the ICI committee.</td>
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<tr>
<td><strong>Content:</strong> New management arrangements will deal with these important and sensitive issues</td>
<td></td>
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<td><strong>Issue: Current maintenance issues</strong></td>
<td>I acknowledge the significance of these issues, and we will provide such updates to reflect key milestones. The following information is available now:</td>
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<tr>
<td><strong>Request:</strong> That clarity on major maintenance issues is provided.</td>
<td>(i) The Cable Band Bolt Replacement. This work is expected to be completed in September 2013 with TS contributing up to £2 million towards this scheme in 2013/14. (ii) Cables will need to be continually monitored and inspected. Damage already done to the wires inside the cables cannot be repaired. Slowdown in deterioration means the SG can continue to plan on the basis of the existing Road Bridge being used as a dedicated public transport crossing. The increasingly disruptive and costly maintenance that will be required on the Forth Road</td>
</tr>
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</table>
| Issue: Engagement with other Bridge operators  
Membership should continue, as proposed by the FETA Chief Bridgemaster | Bridge in the future is also one of the main reasons for the need for a new crossing.  
I welcome the Committee’s view on our commitment to maintain national and international engagement. I agree with the Chief Bridgemaster that there is added value in contact with other similar bridges elsewhere in the UK and Rest of the World.  
TS (rather than the Operating Company) would take on membership of international bodies, as happens currently with other international road organisations to ensure continuity of experience. However, as I suggested during the debate, senior FBOC staff based at the Bridges will have opportunities to participate in these fora as part of their duties, as well as their on-going training and development. |
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<tbody>
<tr>
<td>Content: The Committee recommend that FETA’s existing membership of organisations with responsibility for similar bridges elsewhere in the World is maintained.</td>
<td></td>
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<tr>
<td>Equal Opportunities</td>
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<tr>
<td>Content – The Committee noted the statement that the Bill’s provisions are non-discriminatory.</td>
<td>Transport Scotland will continue to monitor the contents of the FBOC Contract to avoid any potential discriminatory impacts.</td>
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</tbody>
</table>
### Topics raised during Stage 1 of the Parliamentary Debate, by whom; and Official Report Column reference

<table>
<thead>
<tr>
<th>Assurances to City of Edinburgh Council (CEC) over liabilities (Minister for Transport and Veterans, Col 18212)</th>
<th>Response of Minister for Transport and Veterans</th>
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<tbody>
<tr>
<td>As suggested by the ICI Committee, I confirmed that I had written to the Council to provide the assurances sought. This point is also addressed in the reply to the ICI Committee report, above.</td>
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| Was specific legal advice taken in respect of State Aid; and was there likely to be a state aid impediment? (David Stewart MSP, Labour, Col 18211 (intervention); Helen Eadie MSP, col 18228) | The SG draws on oral and written legal advice as appropriate from its lawyers, from Counsel, from external solicitors and from Law Officers. However, other than in exceptional circumstances, the SG does not comment on the source of such advice, and the content of any legal advice remains confidential. However, only the European Commission (or European Courts if needed) can provide legal certainty on matters of State Aid. My view remains that the risk of a successful challenge had FETA been able to use state funds to finance a tender bid or to contract a Direct Labour Organisation would have been too great, as in all likelihood this would have constituted State Aid. Conversely, the Bill offers certainty of tenure for all existing FETA staff, and indeed the prospect of cost efficient job opportunities for new staff. |

| The ICI Committee calls on the Scottish Government to reflect on its approach to consultation (Maureen Watt MSP, col 18215) (Also raised by David Stewart MSP, Col 18224) | This point is addressed in the reply to the ICI Committee Report, above. |

<p>| Long term maintenance &amp; optimum contract length (Maureen Watt MSP, Col 18216) | This point is addressed in the reply to the ICI Committee Report, above. |</p>
<table>
<thead>
<tr>
<th><strong>FETA and Value for Money (Elaine Murray MSP, Col 18216)</strong></th>
<th>This point is addressed in the reply to the ICI Committee Report, above.</th>
</tr>
</thead>
</table>
| Union expectation that (i) blacklisting or (ii) tax avoidance means that a company will not be eligible to tender (Elaine Murray MSP, Col 18216) | (i) Scottish Ministers are totally opposed to blacklisting or the compiling of a blacklist and the SG is developing guidance for public bodies on addressing the issue in future procurement processes and public contracts.  
(ii) Scottish Ministers are considering what additional measures can be taken, as part of the procurement process, to promote tax compliance by Government suppliers.  
Suppliers which have not fulfilled their obligations in relation to the payment of taxes can be excluded from bidding for public contracts:  
- The Public Contracts (Scotland) Regulations 2012 specify the grounds on which companies can be excluded from bidding for public contracts.  
- Under the Regulations, companies which have not fulfilled obligations relating to the payment of taxes under the law of the United Kingdom or the relevant State in which the company is established may, at the discretion of the public body, be excluded from bidding for public contracts.  
- Companies are asked to disclose this information when completing the SG’s standard Pre-Qualification Questionnaire (PQQ) which is available for use across the public sector.  
- The PQQ makes clear that failure to disclose the relevant information or serious misrepresentation in relation to the information disclosed will result in exclusion from the procurement process or the termination of any subsequent contract.  
Ministers are considering what additional measures can be taken to promote tax compliance:  
- The UK Government has introduced a new policy under which suppliers bidding for central Government contracts with a value of £5 million or over and subject to the EU procurement rules will have to self-certify that they have complied with their tax obligations. |
| **Blacklisting due to trade union membership (Elaine Murray, MSP, col 18217)** | This point is addressed in the reply to the ICI Committee Report, above.  

The SG has invited the Unions to work with us on the development of guidance for public bodies on addressing the issue in future procurement processes and public contracts. |
|---|---|
| **Liabilities and City of Edinburgh Council (Elaine Murray MSP, Cols 18217 – 18218)** | This point is addressed in the reply to the ICI Committee Report, and subsequent correspondence, attached.  

TS also continues to engage with FETA and CEC on this topic. |
| **Local accountability, Forth Bridges Forum membership, and relationship with Community Councils in respect of construction (Elaine Murray MSP, Cols 18218 – 18219; Helen Eadie MSP, Col 18228)** | I am not replicating FETA’s local accountability arrangements but will ensure that the FBOC Contract provides more than adequate safeguards for the local community. Budgetary and contractual responsibility for maintenance will rest with the Minister for Transport, and, furthermore, it would be unworkable to introduce any intermediate governance (such as local Councillor representation) to interfere in the contract whilst enjoying fiscal immunity.  

Nonetheless, the views of Community Councils and local residents, on matters surrounding the management and maintenance of the Forth bridges, are taken into account. For instance, the Forum’s World Heritage Site sub-group includes local community representatives, and options such as this will be presented to Community Groups and residents to ensure that effective mechanisms are developed before the FBOC is appointed and the new bridge opens. |
<table>
<thead>
<tr>
<th>Construction concerns and relationship with TS and impact of noise (Elaine Murray MSP, Col 18218 and Colin Keir MSP, Col 18225)</th>
<th>While these matters are out-with the direct scope of the Bill, TS’s Forth Replacement Crossing (FRC) team has provided the following information:</th>
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<tr>
<td>“Consultation and community engagement have been at the heart of the FRC project since day one. So much so, in fact, feedback from local communities led to fundamental improvements to the original scheme design. We take our commitments seriously. The contractual requirements placed upon our Contractors and our ongoing monitoring arrangements are as extensive as or greater than you could find on any other comparable project. We have a 24-hour, 7-day-a-week freephone hotline and a 6-day-a-week drop-in Contact and Education Centre for anyone with an enquiry or complaint to get direct access to the project team.</td>
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<tr>
<td>“In addition we recently held seven update briefing sessions at the Contact and Education Centre on January 30th and 31st which over 200 people attended followed by two Open Days on the April 5th and 6th attended by over 150 people. We also host two regular Community Forums (north and south), which allow community councils, community representatives and senior project figures from Transport Scotland and our Contractors to get around the table and address any issues of concern.</td>
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<tr>
<td>“To provide some context, in the 19 months between August 2011 to February 2013 FCBC, the Principal Contractor, received an average of just over 4 complaints per month (79 in total) on issues such as noise and vibration, traffic management and isolated flooding.</td>
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<td>“These flooding incidents in the summer of 2012 were caused by exceptional rainfall prior to the planned installation of mitigation. Both these incidents and the widespread disruption caused elsewhere in Scotland by the unusually wet conditions were extensively reported by the media at the time. While we have sympathy for the residents affected, we do not believe</td>
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these incidents were caused by construction activity [as a recent newspaper articles] asserts.

“We take any complaint seriously and FCBC are being responsive to issues when they arise. We continue to closely monitor activity on the community’s behalf.”

<table>
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<tr>
<th>Minimum standards on procurement, community benefit, apprenticeships, and long term unemployed; employment and blacklisting and provision of information (Elaine Murray MSP, Col 18219)</th>
<th>Many of these points are addressed in the reply to the ICI Committee Report, above. However, TS will also be able to provide the ICI Committee with the relevant contract and pre-qualification documentation in respect of the Contract as it is published. It would not be appropriate to publish tender documentation prior to this stage.</th>
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<tbody>
<tr>
<td>Representation on UK and International Bridge Management organisations (Alex Johnstone, MSP, Col 18220)</td>
<td>This issue is addressed in the reply to the ICI Committee Report, above.</td>
</tr>
<tr>
<td>Expressed concern that the length of FBOC contract <em>may</em> extend to 15 years (Alex Johnstone, MSP, Col 18221)</td>
<td>The maximum length of contract remains 10 years.</td>
</tr>
<tr>
<td>FETA has not been able to bid for the contract on the basis “that it will be extinct by the time the tenders go round” (David Stewart, MSP, Col 18223). When will tender documents be issued?; timescale for assessment and decision on winning bid? (Col 18224)</td>
<td>My answer to written Parliamentary question S4W-140001 refers. Various options were considered, including some which would have involved the Forth Estuary Transport Authority (FETA) having responsibility for managing and maintaining both the existing Forth Road bridge and the new crossing, but none in respect of FETA were considered feasible. There was insufficient evidence to support Value for Money focus within FETA, and therefore no mechanism to extrapolate how FETA would achieve Value for Money in a twin bridge strategy. Also, while the FETA 2002 Order provided FETA with borrowing powers, it would have needed a new mechanism for repaying a loan if it had prepared a bid which proved...</td>
</tr>
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unsuccessful.

If FETA had used state funding to finance a tender bid (as they are fully funded by the Scottish Government) then this would very likely have constituted State Aid. In general, the European Commission considers State Aid to have a damaging effect on competition and therefore takes a serious view of aid given in contravention of the State Aid rules. If the option of FETA being able to bid had been deemed feasible legislation would have been required to give them that power.

Subject to Parliament’s approval of the Bill and Royal Assent, Transport Scotland expects to issue tender documents for the twin Bridge Operating Company Contract in Autumn 2013, with contract award by December 2014, and commencement by July 2015.

Why not expand FETA to cover the new crossing too?; (David Stewart MSP, Col 18224)

My answer to written Parliamentary question S4W-140002 refers:

The Scottish Government draws on oral and written legal advice as appropriate from its lawyers, from Counsel, from external solicitors and from Law Officers. However, other than in exceptional circumstances, the Scottish Government does not comment on the source of such advice, and the content of any legal advice remains confidential. Only the European Commission (or European Courts if needed) can provide legal certainty on matters of State Aid.

To permit statutory responsibility for managing and maintaining the new Forth Crossing to be delegated to FETA by Scottish Ministers, a comprehensive redrawing of its functions would first have been necessary as that power is not contained in the 2002 Order that establishes FETA. There would have been a serious risk that delegating the functions to FETA would have been perceived as being uncompetitive as the market had not been tested. Without testing the market, value for money cannot be
demonstrated. Conversely, the Forth Road Bridge Bill offers certainty of tenure for all existing FETA staff, and indeed the prospect of cost efficient job opportunities for new staff.

The Explanatory Notes to the Bill explain that Scottish Ministers’ preferred option is for the implementation of a twin bridge maintenance strategy with a single Forth Bridge Operating Company. The Notes also explain that Ministers rejected the option to involve FETA in operating both Road Bridges. As the new route is a motorway and the new bridge is a wholly different type, a very great burden would have been placed on the Board.

Further information is available within the Explanatory Notes, and Transport Scotland’s formal response to the Infrastructure and Capital Investment Committee Report on the Bill, and Stage 1 Debate.

<table>
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<tr>
<th>Question</th>
<th>Answer</th>
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<tr>
<td>Will there be an unsuccessful bidder premium (David Stewart MSP, Col 18224)</td>
<td>I confirmed during the Stage 1 Debate that there would be no premium.</td>
</tr>
<tr>
<td>Will the successful bidder have to register employees in the United Kingdom for national insurance purposes? (David Stewart, Col 18224)</td>
<td>One of the key principles flowing from the EU Treaty, which applies to all public procurement activity, is that procurement processes must not be discriminatory. The Public Contracts (Scotland) Regulations 2012 permit public bodies to exclude from a procurement process any bidder which has failed to fulfil obligations relating to the payment of social security contributions or the payment of taxes under UK law or the law of the relevant State in which the bidder is established. At the time of the publication of the FBOC contract, the SG will ensure that the tender process and the Contract will comply with all current legislative requirements, as well as best practice in terms of policy, promoted by the SG itself.</td>
</tr>
<tr>
<td>Cross Forth traffic and accommodating non Motorway traffic (David Stewart MSP, Column 18224)</td>
<td>While I will write to the Committee and Mr Stewart on this point, it is important to note that the purpose of the FRB Bill is to pave the way for the most cost-effective</td>
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18224) and co-ordinated approach to the management and maintenance of the FRB and FRC. It does not revisit the provisions and commitments arising from the Forth Replacement Crossing Act, nor alter the proposed new role of the FRB as a dedicated public transport corridor.

<table>
<thead>
<tr>
<th>Issues of noise (Colin Keir MSP, Col 18225)</th>
<th>See above response (Elaine Murray, Col 18218, refers)</th>
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<tbody>
<tr>
<td>Liability for construction with regards to City of Edinburgh Council and Fife (Roderick Campbell MSP, Col 18226)</td>
<td>This remark appears to refer to construction of the new Forth Crossing when CEC’s concern over liabilities is in respect of the A8000/M9 Spur. Neither CEC nor Fife Councils have incurred costs with regard the new Crossing.</td>
</tr>
<tr>
<td>FETA’S ability to tackle congestion (Helen Eadie, Col 18228)</td>
<td>FETA retains all its powers at present to manage congestion. In future, the twin bridge strategy and, subject to approval, this Bill will see both Forth Road Bridges become part of the existing Trunk Road Network. Furthermore, existing and potentially improved policing arrangements will support the arrangements for the new Bridges, and the provision of enhanced wind shielding on the new crossing will protect the crossing from the effects of wind and provide a more reliable corridor for wind susceptible vehicles. The Intelligent Transport System being introduced as part of the twin bridge strategy will smooth traffic flow and help to make journeys more reliable. During incidents or periods of congestion when demand exceeds capacity the system will set signals and message signs to inform and advise drivers to effectively manage incidents and reduce queues. To help promote and encourage use of public transport bus lanes are provided on the southbound M90 in Fife and on the southbound M9 in the vicinity of Junction 1A. These will operate on a 24-hour, 7-days a week basis and will be the first such schemes to be implemented on the motorway network in Scotland.</td>
</tr>
<tr>
<td>Perth and Kinross Council’s absence from the Forum (Helen Eadie MSP, Col 18228)</td>
<td>Although FETA’s board has membership from Perth and Kinross Council, the Forum is currently concentrating on localised issues, and it not seeking to</td>
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replicate or replace the FETA Board. Perth and Kinross Council did not respond to the ICI call for evidence.

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<thead>
<tr>
<th>Forth Bridges Forum membership  (Helen Eadie MSP, Col 18228)</th>
<th>As Scottish Ministers will ultimately be responsible for the Forth Road Bridges, and Network Rail for the Forth Bridge, I felt that it was appropriate for officials to take the work of the Forum forward. Elected members from local authorities are well aware that meaningful participation in any Group often involves an acceptance of responsibilities (including financial). Local Authority officials are represented on the Forum, alongside counterparts from Transport Scotland, Network Rail, and Historic Scotland. Unlike FETA, the Forth Bridges Forum is not a legal or statutorily independent body.</th>
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<td>Procurement Reform Bill (Richard Baker, MSP- Col 18232)</td>
<td>Although the SG has done a great deal over recent years to improve the way the procurement systems operate in Scotland, Ministers have announced their intention to introduce a Procurement Reform Bill. Ministers intend to use the Bill to ensure that contract opportunities are advertised through Public Contracts Scotland – helping Scottish businesses to find and win contracts; and that public bodies adopt transparent, streamlined, proportionate, standardised procurement processes that are business-friendly.</td>
</tr>
<tr>
<td>Lowest price tender, quality and sustainability (Richard Baker MSP, Col 18233)</td>
<td>The 4G operating company contracts already provide for a price/quality ratio, as will the FBOC contract. The price/quality ratio will be in the range 70/30 to 90/10. Based on experience elsewhere, the FBOC contract will be able to make use of performance measures and KPIs to incentivise the contractor to deliver high quality and improving services, as well as to encourage innovation. The contract will also require the FBOC and other 4G operating companies to work with Transport Scotland to continually develop and extend the range of KPIs over the period of the contract.</td>
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</table>
Forth Road Bridge Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

<table>
<thead>
<tr>
<th>Section 1</th>
<th>Schedule</th>
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<tbody>
<tr>
<td>Sections 2 to 8</td>
<td>Long Title</td>
</tr>
</tbody>
</table>

Amendments marked * are new (including manuscript amendments) or have been altered.

After section 4

Elaine Murray

1. After section 4, insert—

<Monitoring

(1) The Scottish Ministers must by regulations make provision for a body to monitor the management and maintenance of the Forth Road Bridge.

(2) Regulations under subsection (1) must, in particular—

(a) provide that membership of the body must include a member of—

   (i) City of Edinburgh Council,
   (ii) Fife Council,
   (iii) Perth and Kinross Council,
   (iv) West Lothian Council,

(b) provide for the publication of minutes of the body’s proceedings.

(3) Regulations under subsection (1) are subject to the negative procedure.>
INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

EXTRACT FROM THE MINUTES

10th Meeting, 2013 (Session 4)

Wednesday 1 May 2013

Present:

Jim Eadie
Gordon MacDonald
Elaine Murray
Maureen Watt (Convener)

Alex Johnstone
Margaret McCulloch
Gil Paterson (Committee Substitute)

Apologies were received from Adam Ingram (Deputy Convener).

The meeting opened at 10.00 am.

Forth Road Bridge Bill: The Committee heard evidence on the Bill at Stage 2 from—

Keith Brown, Minister for Transport and Veterans.

The Committee considered the Bill at Stage 2.

Amendment 1 was moved and, no member having objected, withdrawn.

The following provisions were agreed to without amendment: section 1, schedule, sections 2, 3, 4, 5, 6, 7 and 8 and the long title.

The Committee completed Stage 2 consideration of the Bill.
Scottish Parliament
Infrastructure and Capital Investment Committee
Wednesday 1 May 2013

[The Convener opened the meeting at 10:00]

Forth Road Bridge Bill: Stage 2

The Convener (Maureen Watt): Good morning, everyone. I welcome you to the Infrastructure and Capital Investment Committee’s 10th meeting in 2013. I remind everyone to switch off all their mobile devices, as they affect the broadcasting system.

We have apologies from Adam Ingram, to whom I spoke last night. He is making good progress. Gil Paterson is attending as a committee substitute.

The first item on our agenda is to consider the Forth Road Bridge Bill at stage 2. We have only one amendment to consider, so we will complete stage 2 consideration at this meeting.

I welcome Keith Brown, the Minister for Transport and Veterans, and his supporting officials: Graham Porteous, who is head of the Forth Road Bridge Bill team, from Transport Scotland; Susan Conroy from the Scottish Government legal department; and Fraser Gough from the office of the Scottish parliamentary counsel.

Section 1 agreed to.
Schedule agreed to.
Sections 2 to 4 agreed to.

After section 4

The Convener: Amendment 1, in the name of Elaine Murray, is in a group on its own.

Elaine Murray (Dumfriesshire) (Lab): I apologise to the minister and his officials for dragging them along for one amendment.

The amendment seeks to address some of the concerns that the City of Edinburgh Council raised at stage 1. As we know, the bill dissolves the Forth Estuary Transport Authority and transfers its properties and liabilities to the Scottish ministers and its staff to what is likely to be a private sector bridge operator. The minister advised us on 27 February that the contract arrangements would be monitored through Transport Scotland’s performance audit group and that he had initiated a forum for community interests to be represented.

However, there is no mention of a Forth crossing forum in the bill and it is unclear how its discussions and decisions will be recorded and disseminated. The minutes of meetings of FETA were available on the City of Edinburgh Council’s website until the end of 2011. I am not sure why they were not there thereafter but, prior to then, the public could monitor what had been decided at those meetings.

Because the bill does not mention the forum, my amendment provides for the forum to be formalised through a negative instrument. It provides for representation on the forum from councillors on the four local authorities that are represented on FETA. It also requires that the forum’s minutes be published—for example, on Transport Scotland’s website.

The minister said at the committee that he was not sure what exactly the City of Edinburgh Council was asking for. Nor am I, I have to say, and I am not absolutely certain that the amendment would fully address the council’s concerns. However, it would allow elected members to attend meetings that will monitor the management and maintenance of the crossing. It would also enable them to ask questions of Transport Scotland on behalf of their communities and allow the public to access minutes of those meetings.

I am interested to hear reactions to the amendment. It could be refined or changed at stage 3 if necessary.

I move amendment 1.

The Minister for Transport and Veterans (Keith Brown): The amendment that Elaine Murray lodged seeks to give local councillors a degree of oversight of the management of the Forth road bridge—it specifically mentions the Forth road bridge. I am unsure how that would work in the forum, which is already established, given that its task is to look after the three bridges. If Elaine Murray thinks that through, she will realise that that would be difficult.

The committee has previously discussed councillor involvement in the Forth bridges forum. In its stage 1 report, the committee agreed with my view that it would not be appropriate for the membership of the forum to include elected local authority representatives. All three local authority areas are represented by their officers at a senior level on operational issues.

It is the Government’s view—and, to judge by its report, the committee’s view—that there is no reason for councillors to have a formal role in overseeing the management and maintenance of the Forth road bridge. The bill will make the bridge part of the trunk road network, and nowhere in Scotland do councillors have a formal role in the
management of trunk roads, including other major estuarial crossings.

The Government is happy that existing systems ensure that local issues are dealt with effectively across the trunk road network, as was the case with previous Administrations. The Government also welcomes representations that are made by councillors and indeed directly by members of the public.

On local accountability, the Scottish Government was democratically elected and it is held to account by the Parliament and its committees. We have had no representations from any of the other councils that are mentioned in the amendment seeking representation on the forum. As Elaine Murray conceded, when a representative from the City of Edinburgh Council addressed the committee, it was unclear what form the proposed representation would take.

We therefore believe that the amendment would do nothing for local accountability. All that it would do is require the Government to require councils to appoint members to a quango that would have no powers and no real purpose. In our view, there is no need to create a new statutory bureaucracy.

Councils and in particular local communities are more than welcome to make representations to me or my officials. In fact, I would go further and say that Scottish Government officials will be more than happy to go to individual councils and make presentations to them if they have particular concerns about issues that arise in relation to any of the three crossings, in so far as they can do that; of course, the rail bridge would be for Network Rail to cover. Councils can make representations to me and my officials on any matters relating to the management of the trunk road network.

For the reasons that I have outlined, I urge Elaine Murray not to press amendment 1. Failing that, I recommend that the committee rejects it.

Elaine Murray: I was interested to hear the minister’s comments. The amendment has perhaps not been correctly worded in relation to the three bridges. However, I was slightly confused to hear the minister say that the body would be a quango, as I understood that he had already set up a forum of this nature. The amendment would just formalise the arrangements for that and make the minutes of its meetings public. That is important because it is still not clear how members of the public may access information on what has been discussed.

The amendment does not necessarily seek to make councillors the decision makers. The point is that they would be on a body that would be able to monitor the management, that they would be able to ask questions of Transport Scotland and that the information would be publicly available.

I will not press the amendment, because I am not certain that it completely addresses the City of Edinburgh Council’s concerns. I will reflect on whether I should lodge a similar amendment at stage 3 and whether there would be merit in doing so.

Amendment 1, by agreement, withdrawn.

Sections 5 to 8 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the Forth Road Bridge Bill. It has been one of the shortest stage 2s that we have had. I thank the minister and his officials.

I will suspend the meeting briefly to allow the minister to leave the room and the witnesses for the next item to take their seats.

10:08

Meeting suspended.
Forth Road Bridge Bill: The Minister for Transport and Veterans (Keith Brown) moved motion S4M-06605—That the Parliament agrees that the Forth Road Bridge Bill be passed.

After debate, the motion was agreed to (DT).
On resuming—

Forth Road Bridge Bill: Stage 3

The Deputy Presiding Officer (John Scott): Good afternoon, everyone. The first item of business is a debate on motion S4M-06605, in the name of Keith Brown, on the Forth Road Bridge Bill. No amendments to the bill have been lodged, so we move straight to the debate on the motion to pass the bill.

The Minister for Transport and Veterans (Keith Brown): I thank the Infrastructure and Capital Investment Committee’s convener, Maureen Watt, and the committee for their consideration of the bill, and I thank the Subordinate Legislation Committee and the Finance Committee for their earlier consideration of it.

The Forth Road Bridge Bill provides for the regime for the management and maintenance of the Forth road bridge by a body other than the Forth Estuary Transport Authority. The bill provides for a single contract to manage and maintain both Forth road bridges and deliver value for money and operational efficiencies, with projected savings over the alternatives of about £1.2 million per annum. The bill also provides for a transfer to the Scottish ministers of FETA’s land and assets for use by the bridge operating company and of its liabilities.

There will be no compulsory redundancies for the 72 staff employed by FETA, because they will be transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006 to the new operating company. FETA’s existing byelaws will be revoked and replaced as necessary by road traffic regulation orders.

The Infrastructure and Capital Investment Committee published its stage 1 report on 18 March, and my considered response to the issues that it raised was made during the stage 1 debate and contained in my reply of 24 April to the committee convener. At stage 2, Elaine Murray moved an amendment on the Forth bridges forum, which was subsequently withdrawn. We welcome further debate on the bill today.

The bridge has served the local area and the nation well over the past 49 years and has carried more than half a billion vehicles since opening in 1964, which is well beyond what was envisaged when it was designed and built. It will obviously be 50 years old next year. I suspect that every member in the chamber has used the bridge. It is not something that is quickly forgotten, particularly because, at one time, it had the longest suspension bridge span outside the USA.

The bill will dissolve FETA, whose staff have dedicated large parts of their working lives to the bridge and built up an extensive knowledge of its workings. By transferring the FETA staff and their experience to a single operating company that will look after both bridges and the connecting roads, we are not only protecting jobs but ensuring that the wealth of knowledge is retained.

I am reminded of a programme that I saw recently from the American television channel PBS about the Brooklyn bridge and the extent to which the construction and maintenance of a bridge as significant as that can form a large part of people’s lives. I was privileged to be at an event recently to which the veterans who built the Forth road bridge came along, and we heard about their stories and experience.

I welcome the news that the recent inspection carried out by FETA on the anchorages has provided very positive findings. Anything that offers confidence that the bridge is on a more secure footing will be well received by the people who rely on it. The efforts of the FETA workforce on that should be recognised, as should the work to prevent further deterioration in the cables from corrosion. The findings also confirm the Forth road bridge’s future as part of a twin-bridge strategy under which the bridge will be used as a dedicated public transport crossing. I look forward to using the bridge in the pedal for peace event, which I will undertake with Provost Jim Leishman of Fife Council this Saturday.

The bill will pave the way for a single operating company to look after the trunk road from Halbeath in the north to Kirkliston in the south, and it will include the Forth road bridge and the new Forth crossing motorway. The bridge operating company contract will combine the best practice from FETA’s operations and work services manuals with Transport Scotland’s new fourth generation of operating company contracts to ensure that existing service levels are maintained, if not improved.

As I mentioned at stage 1, the Scottish Government’s approach to contracting for network maintenance has delivered continual improvement and significant efficiency savings, which were estimated to be worth about £18.6 million in 2012-13. The Highways Agency in England recently highlighted how Scotland’s approach can generate cost savings without compromising service delivery. We have given assurances that the important role that FETA has in the community will be captured in the contract or via the Forth bridges forum.

As the bill has progressed through the Parliament, we have engaged with and continued to listen to people who will be affected. We acted promptly when worries were expressed about
pensions, for example. We were quick to put fears to rest by committing to the continuation of FETA’s current arrangements. Ministers will act as a guarantor for FETA pensions. When concern was expressed about the continued availability of the crossing to pedestrians and cyclists during severe weather, we gave a commitment that arrangements that FETA put in place would be written into the operating contract, to ensure that the public do not experience a diminution in service post the dissolution of FETA.

The construction of the bridge’s neighbour, the Forth replacement crossing, continues to progress on budget and is employing about 1,200 people and benefiting 334 Scottish firms. The crossing is on time for completion by December 2016.

We have committed funds to improve the cycle link between Fife and Edinburgh—in particular the part between the existing bridge and Edinburgh.

The people of Scotland are having their say on the new crossing’s name. Other countries, particularly Canada, are paying attention to how we are engaging individuals and communities in the biggest infrastructure project in a generation. The response from the public, in voting for their favourite name, has been tremendous. More than 27,500 people have had their say and, with 15 days left before voting closes on 7 June, the public still have the opportunity to influence and be part of an historic process, by logging on to www.namethebridge.co.uk.

Bus lanes that are built as part of the Forth replacement crossing managed motorway project on the M90 and the M9 will prioritise public transport between Halbeath and Edinburgh. We have recognised the importance of public transport and the need to make it more attractive to the public. The public transport corridor will continue to encourage modal shift from the car to public transport and will contribute to cross-Forth travel becoming more sustainable.

The bill is an important step in achieving that. When the new crossing opens in 2016, commuters will be able to exploit public transport options at Ferrytoll and the new Halbeath park and ride. They will be able to travel along the bus lanes and across the existing Forth road bridge to Edinburgh and West Lothian, which will take as much as 30 minutes off the peak journey times from the time when the considerable investment began.

Given that 75 per cent of all southbound bridge traffic passes within a mile of Halbeath, I was pleased to announce last year that the Scottish Government would provide up to £10 million to Fife Council for the park-and-ride facility. I was there at the start of the construction project, which is well under way; I look forward to it being delivered later this year.

The Forth bridges forum has been set up to facilitate a strategic and collaborative approach to the management and operation of the bridges. It is led by Transport Scotland and attended by senior officials from the bodies that are currently responsible for the bridges—Network Rail for the Forth bridge, FETA for the Forth road bridge and Transport Scotland for the new Forth crossing—and from the City of Edinburgh Council, Fife Council, West Lothian Council, Historic Scotland and VisitScotland. Collectively, the forum not only supports the bridge operators with planned activity but takes forward action to promote the three bridges as a tourist destination. I hope that members agree that Scotland will have a valuable and unique asset in three iconic structures—feats of cutting-edge engineering of their times, spanning three centuries—which will become an international tourist destination.

A good example of how well the forum’s arrangements are working is its sub-group, the Forth bridge world heritage nomination steering group. That group has invited participation from the local community, which is central to everything that the forum is doing, and has just launched a 12-week consultation exercise to help to inform the application for world heritage status for the Forth bridge.

Provision for the Forth road bridge to be adopted into the trunk road network will allow for the most cost-effective management of the bridge and support the transport measures that we think will facilitate the shift from the car to more sustainable forms of transport. As I said, through a number of provisions and our listening to the people who are most affected by the bill—local communities and the workforce at FETA—we will protect existing staff, with a commitment of no compulsory redundancies. Through TUPE, we will ensure that the expertise that we have in FETA is retained.

For those reasons, I hope that members will support the bill at decision time.

I move,

That the Parliament agrees that the Forth Road Bridge Bill be passed.

14:39

Elaine Murray (Dumfriesshire) (Lab): As the minister has said, the bill is very short. It abolishes the Forth Estuary Transport Authority and transfers its assets to the Scottish ministers. It transfers the staff who work for FETA to the bridge operating company and it trunks the existing Forth crossing and the surrounding roads.

There is little in the bill to amend. However, I lodged an amendment at stage 2 to allow discussion of an issue to which I will refer later. I
have not brought that amendment back at stage 3. First, it would not get through, and there seemed little point in dragging every member of the Parliament into the chamber for one unsuccessful amendment. Secondly, I do not think that an amendment to this very short bill is required to achieve the changes that I wish to discuss, given that the issues involved are not contained in the bill.

Committee members are aware of the concerns expressed by the City of Edinburgh Council about the abolition of the Forth Estuary Transport Authority and the consequent lack of input from local elected members and lack of availability of information on how management decisions will be made. The Forth Estuary Transport Authority includes councillors from four local authorities: the City of Edinburgh Council, Fife Council, West Lothian Council and Perth and Kinross Council. The minutes of FETA meetings were recorded and published—they were certainly published on the Edinburgh council website.

During stage 1 consideration of the bill, none of the councils other than Edinburgh expressed concerns. Before this debate, I contacted councillors from the other councils represented on FETA, and it turned out that they all agreed with Edinburgh’s concerns. Some went further and said that they felt that FETA’s abolition exhibited a centralising tendency on the Scottish Government’s part and, by implication, on the Scottish Parliament’s part. They were concerned that the bridge’s operation was being privatised. One councillor told me that he was disappointed with the Infrastructure and Capital Investment Committee members for not opposing FETA’s abolition, because he would have liked FETA to manage the new crossing, in addition to the existing one.

If that approach had been possible, it would have attracted my support. However, Graham Porteous advised the committee on 16 January that FETA would not be permitted to manage both bridges, because it is fully funded by the Government. He said that, if it used Government funds to bid for the contract, that would constitute state aid and would contravene European Union legislation. No evidence was brought to the committee at stage 1 or subsequently that contradicted his advice. Committee members have to base judgments on evidence rather than make them because other people say that they do not like the decisions that have been made. The fact that the committee was not presented with evidence that contradicted the advice that we were given is one reason why I did not pursue the proposed option.

Keith Brown: Is it possible, now or subsequently, to let us know exactly which councillors made those comments? We received no suggestions along those lines from any of the councils. We have to consult councils, rather than individual councillors.

Elaine Murray: I accept that it is possible that the Scottish Government did not receive such suggestions. In fact, I did not receive them until I asked councillors whether they agreed with the comments that the City of Edinburgh Council had openly made. However, I got that feedback from all the councils that are represented on FETA.

There was general agreement that it made sense for both bridges to be managed by the same organisation. It was also stated that new legislation would have been required, even if it had been possible for FETA to bid to operate both bridges. There were also issues about demonstrating value for money if FETA entered the tendering process, as it was deemed to be difficult to produce an accurate figure for FETA to operate both bridges. On 6 February, Barry Colford from FETA stated that the focus needs to be on the best outcome for road users, although he expressed disappointment that the company was to be discontinued.

I will move on to the amendment that I moved at stage 2, which I did not bring back. I think that there has been confusion over what was being requested for the continued involvement of local councillors after FETA’s abolition. The minister argued that it would be wrong for local authority elected representatives to be “involved in looking after an operating contract that is wholly the responsibility of the Scottish ministers” and that that would be “not dissimilar to asking for the Scottish ministers to be involved in a local roads management project”.

He believed that that would “muddy the waters” with regard to the “line of accountability about who is responsible for taking the decisions on the operating contract and who is responsible for the expenditure”.—[Official Report, Infrastructure and Capital Investment Committee, 27 February 2013; c 1436.]

The minister recognised the need for local representation and advised that he would establish a forum to deal with issues that might arise during the building of the bridge and after it is completed. Local community representatives will be welcome on that forum, as will council officials, I understand. However, for reasons that I still fail to understand, councillors will not. The forum will monitor the building and operation of the bridge; it will not operate the bridge, so objections regarding lines of accountability do not apply.

The minister argued that democratic accountability would be ensured because
“Transport Scotland and the Government will stand behind the contract”.

He also said:

“We should not complicate that further by putting in elected representatives who would not be responsible for the spending decisions.”

The thing is that the forum will not make spending decisions, which will be made by the operating company; the forum will monitor the operation of the bridge and scrutinise spending decisions.

Graham Porteous went on to explain:

“if community groups are unhappy with what the contractor is doing, they have the avenue of the forum to make representations on their behalf.”—[Official Report, Infrastructure and Capital Investment Committee, 27 February 2013; c 1437.]

I was really asking for local councillors to be able to be part of the forum and make representations on behalf of their constituents, or more generally on behalf of their local authorities, which will, after all, be affected by the operation of the bridge.

In addition, in the interests of accountability, the minutes of the forum’s meetings should be published and made available to interested members of the public, who might not be members of the forum. That was the gist of the amendment that I lodged at stage 2.

The minister did not think that it was appropriate to establish another quango in legislation, and I accept that argument. My amendment was probably lopsided in that it referred only to local elected member representation and did not fully encompass the responsibilities of the operating company, which will operate the old bridge as well as the new bridge. Let us be honest—we had not taken evidence on making the forum a statutory body at stage 1 so, in fairness, perhaps the amendment was not appropriate.

I decided not to lodge another amendment at stage 3 because I do not think that those things are for the bill. However, they are concerns of councillors who represent the authorities with the principal interest in the Forth crossing and I hope that they can be discussed further.

14:47

Alex Johnstone (North East Scotland) (Con): As the minister and members will be aware, I like nothing better than a good fight but, to justify that position, it must also be my position to agree with the Government when I do agree with it. I therefore rise to support the motion in the minister’s name.

Members: Hear, hear.

Alex Johnstone: I am surprised by how that impressed back benchers.

I support the decision to go ahead with the change in the management of the Forth road bridge to accommodate the new bridge and structures. It is perhaps surprising that we have reached this stage with no amendments made and almost unanimity in the Parliament. That is because it has been a long road to get to where we are. The decision to go for this particular management structure, which brings an end to FETA and simply manages the bridge and its approach roads as a contract that would do for any other part of the trunk road network, is the best option.

There have been one or two moments of controversy, which it would be inappropriate not to mention at this stage. There was the question of the quality of the consultation that took place. I believe that the Government got that right, but it is not the first time in recent months that we have had question marks over consultation. Perhaps the Government must look at that, to ensure that all parties feel that they are adequately consulted on future legislation.

There was also concern over the transfer of liabilities. Right up to the end of the committee’s stage 1 proceedings, there appeared to be significant concerns, particularly from the City of Edinburgh Council, which believed that it was not being absolved of liabilities. The minister’s timely and decisive letter cleared that argument up once and for all.

In this short opening speech, it is appropriate for me to take the opportunity to pay tribute to FETA and the work that it has done. FETA and its staff have demonstrated their ability to manage the existing Forth crossing, and we can all welcome the fact that many of its staff will transfer to the successor organisation and continue to do that good job.

However, it was under FETA that the most divisive and perhaps inappropriate decision was made in recent years, which caused me to believe that councillor representation in the process was negative, rather than positive. The Parliament’s decisions to permit city entry charges and to require a local referendum to implement them meant that Edinburgh went through the process of having local councillors campaign for city entry charges and then, in the local referendum campaign, against the imposition of city entry charges.

As a result, councillors on FETA suggested that the Forth road bridge tolls should be made variable, with the option of charging up to £4 for cars at certain times as a proxy for the city entry charges that they could not have. Local councillors in Edinburgh proposing changes to the Forth road bridge toll to get round the problem that they created for themselves was an abuse of power.
The fact that, as a result of actions by the Parliament, that never actually happened is a good thing. Nevertheless, the proposal called into question the actions of the councillors behind it.

It remains my view that it is an advantage in the process that ministers will have responsibility for the future management of the bridges. As a consequence, if we in the Parliament have a problem with a bridge's management, we can take it to the minister and have a more direct and responsible line of accountability than we would otherwise have had.

I will say a few words in response to, and in support of, what the minister said about the new bridge. The three bridges together across the Forth will be iconic. If the rail bridge achieves its objective of gaining world heritage status, the whole area of the bridges will become significant for tourism. The opportunities that that presents are worthy of support and our enthusiastic promotion, and I believe that that will be a tremendous advantage for Scotland as well as the Edinburgh area.

My preferred option for the bridge's name is St Margaret's crossing, and I will encourage everybody to adopt that name whenever possible. I want that name to be on the bridge for ever more. After that, the only thing to achieve will be the canonisation of Margaret Thatcher, and my work will be done.

14:52

David Torrance (Kirkcaldy) (SNP): I can tell Alex Johnstone that I voted for the bridge to be called St Margaret's crossing.

The Forth Road Bridge Bill proposes to put the management of both the Forth road bridge and the new replacement crossing under a single bridge operating company. It will also remove legislative barriers, allowing the Scottish Government to include the Forth road bridge in the new contract for maintenance. The benefits of that include financial and operational efficiencies and a strategic and collaborative approach to the management and maintenance of both bridges and the connecting roads from junction 3 of the M90 in the north through to junction 1A of the M9 in the south.

The bill also makes provision for the dissolution of the Forth Estuary Transport Authority but allows for the transfer of all FETA's 72 current employees to a new company under TUPE regulations. That will not only protect their terms and conditions but, more important, ensure the retention of such a valuable wealth of experience so that it can continue to be utilised.

A unified management approach is the key to the continued and effective operation of one of the east coast's vital transport structures, which links north and south. The replacement crossing will provide more efficient and speedier links for both business and commuters, and it will be vital in helping to promote growth in industry and tourism in Scotland.

Locally, the new crossing will provide a welcome boost to the economy by removing uncertainties and helping to increase confidence that, in the future, there will be excellent transport links for the whole of Fife, the east coast and beyond. Those links will allow businesses to grow and expand, providing jobs and strengthening the local economy.

Commuters will also have reason to celebrate the new crossing. Transport Scotland has confirmed that pedestrians, cyclists and bus users will experience no changes as a result of the bill. It is intended that the new operator will carry out the same functions as the current operator. Once the replacement crossing opens, the Forth road bridge will be used exclusively by buses, taxis, cyclists and pedestrians. That will be of real benefit to commuters on both sides of the Forth. Not only will the provision of a dedicated crossing reduce travel times, but it should make journeys much easier and more pleasant. I hope that it will also prove to be a boon to tourism in Fife by encouraging more tourists to venture into the region and experience all the cultural and historical attractions that are on offer.

Commuters have already experienced some of those benefits following the implementation of motorway management technology on the M90 in Fife in December 2012. That was the first time that the intelligent transport system had been used in Scotland. The system creates a dedicated bus lane and uses mandatory speed limits during periods of congestion to minimise traffic jams and provide greater flexibility in journey times for regular commuters. Another early benefit of the crossing is that the system helps to relieve a great deal of the pressure on a heavily used and essential section of the transport network.

The approach under the bill will also provide value for money. The twin bridge contract will allow staff to work on both bridges and on connecting roads. Operations will be managed from existing premises, from where the use of vehicles, plant and equipment will also be overseen. That will not only ensure the best use of available resources but result in savings to the public purse.

The lack of amendments at stage 3 indicates support from across the chamber. I, too, am happy to support the Government's Forth Road Bridge Bill. It will ensure the continued effective
management of the Forth replacement crossing while simultaneously enhancing existing essential transport links.

The benefit of having an excellent system in place to facilitate easy access not only to Fife but to the whole of the east coast is incalculable. It will provide reassurance in the future for the business sector and commuters.

The Deputy Presiding Officer: We have a little time in hand, so interventions would be welcome.

14:57

Margaret McCulloch (Central Scotland) (Lab): This week, the Infrastructure and Capital Investment Committee visited the Forth to hear first hand about the progress that is being made with the new crossing and learn more about the legacy of the existing one. I regret that I could not join my committee for that visit, but I understand that it was an informative trip. It followed a lot of helpful advice and updates that we have received over a period of time.

The new crossing is a once-in-a-lifetime project. As such, it demands full parliamentary scrutiny and a level of accountability that can sometimes be lost when Governments commit to such big undertakings. The bill is essentially about how we manage the Forth road bridge and its connecting roads, which will continue to be an important part of our national infrastructure that will affect the local communities.

As we have heard, the bill will abolish the Forth Estuary Transport Authority, transfer assets and liabilities to the Scottish ministers and redesignate the existing Forth road bridge as a trunk road. It will also allow for the transfer of staff under TUPE regulations, which is necessary in such circumstances.

I draw members’ attention to some of the comments made by the Union of Construction, Allied Trades and Technicians and Unite—both unions that represent the workers concerned—which gave the committee their views on the process.

In dissolving FETA, the Scottish ministers will tender for a new operating company, to which FETA’s workers will immediately transfer. However, the trade unions want to ensure that there is no erosion of their members’ rights in the process and that any changes are consistent with the letter and the spirit of the TUPE regulations.

We expect that the maintenance contract will also go out to tender, and Unite seeks firm assurances that there will be no compulsory redundancies as a result, given the Scottish Government’s previous statements on the matter.

Equally, UCATT is clear that it wants its members to continue to benefit from their membership of the Lothian Pension Fund. The Scottish Government has indicated that that will be guaranteed and that FETA workers will be granted admitted body status, even when they are transferred to the new contractor. I ask the Scottish Government to confirm that that is indeed the case and that steps are being taken to secure jobs and pensions on the Forth estuary.

In light of the arguments made both by my Labour colleague Elaine Murray and by the City of Edinburgh Council, I also ask the Scottish Government to ensure that there is no dilution of scrutiny or accountability.

The new forum that will be established in place of FETA will be officer led and not councillor led. Therefore, I can understand why local communities might feel that they are not being properly represented at a time of great change for the Forth estuary. I do not need to remind the minister that local people and businesses will have to live with the consequences of the decisions that we make today for many years to come.

I stress the need for a joined-up approach to public procurement that is consistent with the wider procurement reform agenda. The current Forth road bridge is iconic, and will remain so for the rest of its lifetime. Just as it is important to create opportunities for workers on the replacement crossing, it is important to make the most of our existing infrastructure. When the new contract is awarded, I ask the Scottish Government to do all that it can to promote youth employment, local jobs and apprenticeships. I also ask it to do all that it can to eliminate blacklisting and to ensure that no firms that continue with such unfair practices receive public money.

The bill has been introduced for understandable reasons, but there is a good case for further guarantees to give local workers and communities more confidence in the process at a time of significant change for all those who live by and work on the Forth.

15:01

Jim Eadie (Edinburgh Southern) (SNP): I, too, am grateful for the opportunity to speak in the stage 3 debate on the Forth Road Bridge Bill. By 2014, the Forth road bridge will have been an essential part of the national road infrastructure for 50 years. It is vital for the economy of Fife, it is an essential link for the east coast corridor and it is essential for the connectivity of Fife and beyond. The Forth road bridge now carries 25 million vehicles every year, which is almost six times the volume of traffic that it originally carried. There are
operational challenges, including its susceptibility to restrictions and closures during strong winds.

The purpose of the bill is "to make provision about the management and maintenance of the Forth Road Bridge" as part of the wider strategy to upgrade the Forth crossing transport network.

As we have heard, the bill allows for the dissolution of the Forth Estuary Transport Authority, which currently manages and maintains the Forth road bridge. The bill also allows for the designation of the Forth road bridge as a trunk road, bringing it under the direct responsibility of Scottish ministers. It allows for the transfer of all FETA's assets and liabilities to Scottish ministers and for the transfer of FETA's staff to the employment of the bridge operator, which will be appointed by Scottish ministers following a procurement process.

Although the Infrastructure and Capital Investment Committee highlighted a number of issues, it agreed that a single bridge operating company is the most appropriate and cost-effective approach to the management and maintenance of both the existing crossing and the new crossing.

The Forth replacement crossing is a major infrastructure project—one that is necessary to safeguard a vital connection in the country's transport network.

The minister and other members who have spoken in the debate have referred to the transfer of the employment rights of existing FETA employees, which is an important issue. The bill offers continuing employment and certainty of tenure for all existing FETA staff. As my colleague on the Infrastructure and Capital Investment Committee, Margaret McCulloch, said, that approach will avoid compulsory redundancies and ensure that employees' terms and conditions are protected.

In its stage 1 report, which was published in March, the Infrastructure and Capital Investment Committee said that it was "reassured that significant efforts have been made to maintain the terms and conditions of FETA staff transferring to the new bridge operator."

Local accountability arrangements formed the basis of much of Dr Murray's speech. We need to remind ourselves of how the committee, having heard evidence from local authorities and other stakeholders, reflected that evidence in its report. The committee's view was that "the inclusion of local authority officials" on the Forth bridges forum "allows for an appropriate level of input".

The committee did not recommend any changes to the forum's membership, which I think is the correct approach.

The committee commended Transport Scotland for its work on the arrangements for staff who are to be transferred across, particularly in relation to pensions. It is right that Transport Scotland should continue to offer staff every available support and that it should work with their trade unions and the other bodies representing staff interests during the transition period.

As my colleague David Torrance highlighted, one of the positive aspects of the bill is the fact that there will be no change for users of the Forth road bridge—I am thinking in particular of cyclists, pedestrians and those who use public transport.

There is a role for the bridge as an active travel corridor. I welcome the minister's commitment, which he reiterated this afternoon, that the public will not experience a diminution in the level of service that is provided. There is therefore an opportunity for the bridge to support sustainable and active travel. Following the opening of the new crossing, the Forth road bridge will be used exclusively by buses, taxis and pedestrians. I think that we all welcome that.

I welcome the stage 3 debate. The Forth Road Bridge Bill is a short bill whose provisions are tightly defined and technical, but it is an important one for Scotland's transport infrastructure network. I commend the minister, members of the Infrastructure and Capital Investment Committee and members from across the chamber for their constructive speeches this afternoon and the constructive approach that they have taken during the passage of the bill. I look forward to supporting the bill at decision time.

On the name of the new crossing, tempted though I am by St Margaret's crossing—not least in deference to Margaret McCulloch, who is a member of the Infrastructure and Capital Investment Committee, and thinking of my political mentor, Margaret Ewing—perhaps we can all agree that it should be the Saltire crossing.

15:06

Richard Lyle (Central Scotland) (SNP): I, too, am happy to take part in the debate.

I will give members a short history lesson, if I may. I have fond memories of using the ferry crossing between North and South Queensferry in the 1960s. I also remember walking across the newly constructed Forth road bridge and the excitement of seeing it when it opened back in September 1964—it was quite something. It is indeed something of an icon, and at that time it
complemented the rail bridge. It is another of the many must-sees for visitors.

Who would have thought then that the bridge, which has now stood for 49 years, would have more than 25 million cars passing over it per annum, which equates to more than 68,000 per day? That level of intensity of use is one of the major contributors to the condition that the bridge is in, and it is why expert opinion has agreed that renewal of the bridge is in the best interests of Scotland’s people. It will also be of great benefit to the local communities in the immediate area.

The new bridge that the bill outlines is pioneering in the sense that, for the first time, it truly captures the imagination of the public—of people from all walks of life. The inclusion of Scotland’s people means that they are included in a decision-making process about a key piece of long-lasting infrastructure. I believe that that also encourages people to participate in politics in their day-to-day lives. I look forward to the results of the public vote on the name of the bridge. I have to confess that I have not voted yet. The options are Caledonia bridge, Firth of Forth crossing, Queensferry crossing, Saltire crossing and St Margaret’s crossing. I compliment the minister on the way in which he has conducted that public participation exercise. I was pleased to see that even the Canadians want to get involved in what is happening.

My hope for the new bridge is that it will remain toll free—I know that, under an SNP Government, that will happen—just as the existing bridge is toll free, as a result of the abolition of tolls under the SNP Government. Alex Johnstone touched on that. I thought that he would go the whole hog and compliment the SNP Government, but he did not.

Looking specifically at the bill and the intentions behind it, it is clear to me that the Scottish Government has looked deeply into a number of options for the management of the bridge. I support the intentions to let a new single contract for the management and maintenance of the new bridge and to safeguard the staff. When reading into the bill further, I thought it best to look at the financial implications of our passing it. I note that the financial memorandum highlights that it is likely to cost about £1.2 million per annum less to let a contract for the management and maintenance of both the Forth road bridge and the Forth replacement crossing, compared with having the two bridges managed by separate organisations.

More generally, with replacement comes a whole host of economic and usage benefits for those who use the bridge. The replacement crossing will be of benefit to its users as it will reduce travel times and travel distances, as has already been stated. The new crossing will also bring with it significant economic impacts for the communities of Lothian and Fife and—by extension—for Scotland as a whole.

As no amendments to the bill have been lodged, it is clear that the whole chamber supports the proposal. I am delighted to have had my chance to take part in the debate and to make my contribution to a hugely significant piece of infrastructure here in Scotland that will be fit for generations to come.

15:10

Helen Eadie (Cowdenbeath) (Lab): Alex Fergusson said that it was a long road to the bridge and then John Pentland, who is sitting behind me, said that it was a bridge too far—I say to him that it was never a bridge too far in my book. If I have to give credit where credit is due, I am very glad that the Government is building a new crossing. As one of the people who were pilloried in the beginning for daring to suggest, many years ago, that we should have a new crossing, I was delighted when it was agreed that we would have one.

On the debate on naming the new bridge, it would be anathema to me—I apologise to Margaret McCulloch—to call it St Margaret’s crossing. To anything to do with Margaret Thatcher I say no—I am sorry, but absolutely no. [Laughter.] Given that some colleagues are saying that we will have independence next year, I am surprised that they have not talked about naming it the Liberty bridge. I throw that suggestion out there.

To come back to more serious issues, I am in trouble all the time these days for being out of step but I did not agree at stage 1, and I still do not agree, that the bill is the right way forward. To me, this is a bit like the debates that we have had about a sense of creeping privatisation in other Government departments—I believe that that is what this is all about.

FETA was established with a very specific, if broad, remit that was even better than that of the Forth Road Bridge Joint Board, which I used to be vice-chair of and which had a fairly broad remit when it was established. However, when FETA came along, its primary purpose was to look at a variety of initiatives—improving cross-Forth travel and reducing congestion, for example. Anybody who comes from that part of Scotland—as I do—will know about the terrible problems that there have been in crossing that particular part of the Forth. The bill will do nothing to enhance the situation. I know that the new Forth crossing should make a huge difference and I am delighted about that, but I still think that there will be issues.
FETA also improved and developed public transport initiatives. Park and ride was developed when I was a transportation spokesperson on Fife Council—on the north side of the river. Now we have the park-and-ride facility at Halbeath, which was planned all those years ago. Such things were part of a planning process that came under the FETA umbrella. What was great about FETA was that it looked at a very specific part of a congested area in Scotland and had a precise role to play.

When the minister is carrying on with this task, I hope that he will address those issues because, frankly, I do not think that Transport Scotland will be able to give them the same intensity of support that FETA has been able to give.

Keith Brown: In relation to Helen Eadie’s point about the Halbeath park and ride, I point out—as I did in my opening speech—that Transport Scotland and the Government have followed through by providing £10 million to get that work done. The project was talked about for a long time but the work will now be done as a result of the Government money that is going into it.

Helen Eadie: Yes, but it was FETA and the local authorities that developed the idea in the beginning, and the fact is that starving FETA of cash diminishes the important role that it played in developing that idea—and then the Government comes along to provide the cash. That was my point. FETA came up with solutions for specific problems, and there were specific congestion problems all around that area of Scotland. I think that there will still be problems in the years ahead but the machinery will not be there to develop ideas. Governments can pull levers but if the levers are not attached to machinery, nothing will happen.

The committee identified many issues, and it is good that the minister has responded positively to so many of them. However, I return to the important point that my colleagues Margaret McCulloch and Elaine Murray raised with regard to local councillor representation. If one looks at the history of how the bridge came about, it is clear that it was the four key local authorities that decided that it would come into being. Throughout the bridge’s history—since 1947—those authorities have addressed, through councillor representation, the specific concerns of the people in North Queensferry, South Queensferry, West Lothian, East Lothian and Fife.

I remember many of the issues that came up at the bridge board meetings during my time as the board’s vice-chair. The Government says that it wants to engage with people, so why does it always discriminate against local authorities just because they might not be the right political colour at a particular time? That is a regressive state from which we must move forward.

The Deputy Presiding Officer: Mrs Eadie, I am glad of your contribution, but you might wish to draw to a close very soon.

Helen Eadie: Okay, Presiding Officer—I am grateful for your tolerance. I will leave it at that.

Annabelle Ewing (Mid Scotland and Fife) (SNP): I am pleased to speak in the stage 3 debate on the Forth Road Bridge Bill. Although I am not a member of the Infrastructure and Capital Investment Committee, I most certainly have, as a member of the Parliament for Mid Scotland and Fife, an interest in the crossings over the Forth.

As I was returning to Edinburgh across the Forth road bridge the other evening, I was struck once again by what a magnificent feat of engineering it is. That also holds true for the iconic Forth rail bridge, and I welcome the fact that it is being nominated for a United Nations Educational, Scientific and Cultural Organization world heritage site award.

It is also to be welcomed that the Scottish Government has just launched a 12-week consultation seeking views on the benefits that a successful bid could deliver for the local communities. I gently say to Alex Johnstone that those benefits would accrue not only to Edinburgh but to the kingdom of Fife; that applies to the benefits of the new crossing with regard to tourism, education, and skills and innovation.

The naming process for the new crossing has been an excellent example of engagement with the public. The shortlist of five names was agreed by a distinguished panel, so it was not for individual back benchers—or the Scottish Government—to come up with names, as Helen Eadie seemed to suggest. The panel has come up with an excellent list of five possible names, so I found it very difficult to make my choice. I have just done so online; for good historical reasons, I have—like my Fife colleague David Torrance—chosen St Margaret’s crossing. I hasten to stress to Alex Johnstone, who is smiling hopefully at me, that my choice had nothing to do with recent historic political events.

I was impressed by the process, and I encourage as many people as possible to go online, to phone or to text—whichever method they prefer—and to make their vote count, because it is very much a people’s naming contest, as it should be. Such examples of public engagement augur very well for the contribution that the Forth bridges forum will make, as it will play a central role in ensuring that the interests of
local people are at the core of management and maintenance of the Forth bridges.

We have heard much this afternoon about the detail of the Forth Road Bridge Bill. The bill’s principal objective is to facilitate the most cost-effective and co-ordinated approach to management and maintenance of the new Forth crossing and the Forth road bridge. It seems to me that contracting management and maintenance for both the bridges to a single bridge-operating company makes most sense, and will certainly provide best value for the taxpayer, who is under a great deal of pressure at present.

I am very happy indeed that the key issue of staff terms and conditions, which has been highlighted by many members—my colleague Jim Eadie, in particular, spent some considerable time on this—has been fully and properly addressed by the minister, such that FETA staff’s rights and terms and conditions will be protected under TUPE. I welcome that. To have that assurance in the bill will provide enormous comfort to the excellent staff of FETA, although I am pleased to note that there will be opportunities for additional positions with the new operating company. I also welcome the minister’s assurance that the Scottish Government will act as guarantor for the important pension rights.

In conclusion I say that, given that those key issues have been addressed, I am very pleased indeed to support the passage of the bill this afternoon.

The Deputy Presiding Officer: We move to winding-up speeches. Alex Johnstone has four minutes, or thereby.

15:20

Alex Johnstone: Presiding Officer, I am tempted to say that there is not much more to say on the subject, but I am aware of the schedule and will do my best to fill my part of the timetable.

On one issue that came up during the debate, I am somewhat disappointed to have been accused of not having given the Government credit for abolishing tolls on the Forth road bridge. I point out that the Government that took that decision was very much a minority Government, so the decision was made by the whole Parliament. Any attempts by Government back benchers to claim the glory for that decisive move is, in my view, an inappropriate use of Parliament.

The abolition of the tolls on the Forth road bridge was part of a sea change in attitudes to provision of such facilities. If we think back to the construction of the Forth road bridge, we recall that the Forth Road Bridge Joint Board was put together not only to build and manage the bridge but to manage the debt that was associated with its construction, and the cost of maintaining it. Therefore, it was reasonable to think that the tolls should no longer be charged once the bridge had been paid for, but the tolls were then justified by the cost of maintaining the bridge. The change from the joint board to FETA had the effect of allowing the bridge authority to build up some extra money, and I suppose that it was sensible for the Government to use that extra resource to improve the bridge access roads, which is what happened.

Keith Brown: Alex Johnstone perhaps hinted at this, but I remind him that the deal when the bridge was constructed was that the tolls would go when the capital costs of the bridge had been paid. Those were paid off in 1994, which is when the tolls should have been removed.

Alex Johnstone: Indeed—that revelation was produced at the time when we discussed the removal of the tolls.

My reason for going through that record of history is that the idea that the bridge should not have tolls, but should be dealt with in much the same way as any other part of the trunk road network, has gained credence and support in Parliament. Therefore, in my view, it is entirely appropriate that we end the practice of having a separate board or organisation for dealing with the bridges. We should now be in the position where, given that the Government pays for maintenance of the facility, he who pays the piper should call the tune. It is important that we have ministerial responsibility and accountability for how the bridge is managed, because the Government will be responsible for deciding how it is funded.

I do not believe that ministerial accountability is a weak route for accountability. Being able to hold Government ministers to account in Parliament is a key part of ensuring public accountability. In recent years, the tendency for Government to form arm’s-length organisations, which are under ministerial control to some extent, but can take the blame when things go wrong, has in effect weakened ministerial accountability in many areas. What is proposed is a clear and decisive line of accountability that will allow us to ensure that, once the new facility is provided, the bridges will be properly managed and funded and, if that does not happen, we will be able to call the minister to account in Parliament.

Cost-effective management is important. The decision that has been made could result in savings of £1.2 million a year on management of the bridge. That is an essential piece of management efficiency. We must ensure that public assets are managed efficiently. I do not see it as a difficulty that private companies will be in a position to bid for the contract and take on the
responsibility. After all, is it not private companies that are building the new Forth crossing in the first place?

I am confident that the arrangements that the Government has put in place through the bill will work; that the new and old bridges will be managed efficiently; and that we will be able to hold the Government to account should there be any failings in how it manages and finances this prospect. Therefore, I am delighted once again to offer my sincerest support for the bill at stage 3 when we vote at decision time.

15:25

Elaine Murray: As Alex Johnstone said, the debate is probably considerably longer than the bill. I, too, am not terribly sure that there is a great deal more to be said, although members have raised a number of issues. When Richard Lyle talked about crossing the Forth by ferry, that took me back; as a young girl I was brought up in Edinburgh and my grandparents lived in Fife. One of the attractions of going to visit my grandparents—aside from the attraction of seeing them, because they spoiled us—was sitting on the ferry eating our sandwiches. It made going to Fife feel almost like voyaging to a foreign country.

Alex Johnstone: It was.

Elaine Murray: I think that people there might well have thought we were foreigners coming in. However, that is a pleasant memory.

I, too, remember seeing the Forth road bridge being built, which was an exciting time. Who would have thought that, only 40-odd years later, we would need another crossing because of problems with the bridge? That is a bit of a surprise to those of us who are long enough in the tooth to have spanned the entire life of the bridge.

A number of members commented on the name of the new bridge. I, too, thought that St Margaret’s crossing was quite a good name for historical reasons, until I heard Alex Johnstone, who totally put me off calling it that. He also shocked other members including David Torrance, who had already voted for calling it St Margaret’s crossing.

Alex Johnstone: Elaine Murray will be aware that I explained my scheme. The second part, about getting Margaret Thatcher made a saint, will probably be slightly more difficult.

Elaine Murray: Indeed. There might be a certain amount of resistance to that.

A number of members talked about staff issues. Margaret McCulloch and Jim Eadie welcomed the fact that the wages and conditions of the staff will be preserved. We on the Labour benches welcome the fact that the Scottish ministers will act as guarantor for FETA employees’ pensions, and that jobs and conditions will be protected under TUPE. I am sure that it will be a relief to the 60 existing pensioners and other previous employees that they will remain part of Lothian Pension Fund.

Alex Johnstone also mentioned the consultation. Initially, there were concerns over the lack of consultation of the relevant trade unions. However, I believe that, as Margaret McCulloch pointed out, the trade unions UCATT and Unite are now happy with the conditions and the assurances that they have received.

Much of the essential detail is not in the bill. That is a matter of fact; it is not a criticism of the bill. As several members made clear, the conditions in the operating contract are crucial and must work in the public interest. Therefore, as Margaret McCulloch said, the procurement process will be important. It must ensure quality and sustainability and should not just be about getting the cheapest price for operation of the bridge. I, too, look forward to learning more about the proposed minimum standards on procurement and how community benefit will be ensured. Apprenticeships and job opportunities for people who are long-term unemployed must be part of the procurement process.

The recent report of the Scottish Affairs Committee on the heinous practice of blacklisting has shocked most, if not all, members. Many of us want companies that are known to have been involved in blacklisting of applicants—because of their political views, trade union membership or simply because they have in the past raised legitimate concerns over health and safety issues—to be excluded from accessing public sector contracts. Many firms that are known to have used blacklists are in the construction sector, but action against blacklisting must be taken across the board and must include companies that might bid for operation of the bridge.

The issue of operation of the bridge took up a bit of time. I was interested to hear from Helen Eadie about the good work of FETA, of which I know she has a lot of personal experience. I, too, acknowledge the good work that FETA did over the years in developing things like the park-and-ride scheme and Halbeath. On the issue of creeping privatisation, the problem for the committee was that we had no evidence presented to us that we could do anything else, or that FETA could take this over. That was a problem for the committee, which we could not really get over.

I feel that Alex Johnstone still misunderstands what I was arguing for. I was not talking about the continuing existence of the current scheme, which
is not possible. I was not talking about councillors invading Transport Scotland and dictating to it how it goes about operating its assets. I was asking for local councillor representation on the bridges forum, alongside the community council representation, and not just council official representation, which is not quite the same thing.

Council officials are not accountable to people who vote. Like civil servants, they are there when the politicians are long gone, so they do not have the same stimulus, if you like, to be responsive to the views of constituents. Therefore, I think that it would be appropriate for councillors to be on the forum that monitors operation of the bridge. That does not mean to say that they would make decisions, but they would play an active part in scrutinising on behalf of their constituents.

I hope that consideration will be given to how minutes of meetings of the forum are publicised and disseminated to members of the public. We will support the bill at stage 3. The issues that I have outlined can be considered after the bill is passed. I hope that the minister will do so.

15:31

Keith Brown: I thank all members for their contributions to what has been a generally very positive debate—apart from the one gratuitously controversial statement by Alex Johnstone. I apologise for getting Alex’s name wrong three times yesterday. I seem to have infected Helen Eadie with the same disease, so I apologise for that. I will make sure that I try to correct the record.

On the name of the bridge, I have been scrupulous in ensuring that I do not express any preference. I was not involved in selection of the shortlist. I fear that Alex Johnstone has done irreparable damage to his preferred option with his comments today. Let us hope that that is not the case.

I also thank Elaine Murray for lodging her amendment at stage 2. I hope that she will agree with me—and with the view of the Infrastructure and Capital Investment Committee—that the make-up of the Forth bridges forum is appropriate for the type of activity that will undertake and that it will ultimately benefit the local community. On the points that Elaine Murray made about having contacted local councillors, we have to take the views of the councils, rather than individual councillors, as I am sure she understands.

It is worth saying that neither Perth and Kinross Council nor West Lothian Council even responded to the call for evidence on the bill. We have to take the express views of the committee into account. We have made clear our reasons for the constitution and membership of the forum. I hope that members will welcome confirmation that the agendas and minutes of future forum meetings will be made available online. Elaine Murray raised that issue, which I know has been a concern.

We do not believe that councillors need to be part of the forum for them to ask questions of ministers about management and maintenance of the crossing. It is worth pointing out that currently about 10 per cent of all correspondence that we receive on the subject comes from councillors, which I think proves that keeping the current proposals for ministerial responsibility for membership—to which Alex Johnstone referred—rather than making provision in the bill or subsequently in regulations, is sufficient.

Although the bill has been unamended since its introduction, we have been listening to people’s views. A number of members have acknowledged the various points that we have listened to and agreed with—not least of which were the concerns of FETA staff.

During the passage of the Forth Crossing Act 2011, it was recognised that arrangements for future maintenance and operation of the bridge must be in place before the new Forth crossing opens. Subsequent analysis of the options has provided a clear way forward. Although the decision to dissolve FETA has not met with universal approval, retention of jobs, a guarantee in respect of staff pensions, a cost-effective regime—which Annabelle Ewing was right to say is very important—and the twin bridges management and maintenance strategy emerged as the clear priorities.

I am glad that so many stakeholders, as well as Parliament, are agreed on those outcomes, and I anticipate that once the new Forth crossing opens, we will agree on encouraging modal shift from cars to public transport across the Forth estuary, which the bill will also facilitate.

In reply to comments on privatisation, I point out that the previous Administration took the same decision with an earlier iteration of the trunk roads maintenance contract. It is the case that, should they want the contract to stay in the public sector, councils could collaborate and put forward their own bid for it; it would not even have to be the councils that were nearest to the bridge that did that. Councils have been able to do that in relation to the trunk roads contracts ever since the decision was taken in the mid-1990s to take responsibility for trunk roads away from councils and it is still possible. Councils would have to apply to be on the tender list. In the past, councils have applied for earlier versions of operating company contracts. FETA could not do that, but the councils could get together and do that if they wanted to.
To return to democratic accountability, elected local authority representatives are in a different category from local groups and local people, whom we have asked to be involved in the Forth bridges forum, in that they have a mandate of their own. That is where the potential for confusion would come in. I feel as strongly about that issue as I do about the requests that we are receiving for ministers to be involved in a council road project—the third Don crossing in Aberdeen. That is not the role of ministers. It is a local authority scheme, and it is right that Aberdeen City Council takes the project forward and deals with the concerns that have been expressed.

In the same way, it is right—as Alex Johnstone said—given that the new Forth crossing is being funded by central Government, that there is a clear line of accountability right through to the minister, who cannot hide from the scrutiny that Parliament can bring to bear. I hope that that assures those who are concerned about the issue that there will be accountability. As I have said, councillors can raise issues, and I am sure that they will continue to do so. The only person who has raised the issue of democratic accountability outwith Parliament is Councillor Hinds of the City of Edinburgh Council.

Elaine Murray’s stage 2 amendment would have allowed scrutiny only of the Forth road bridge, which I do not think was the intention and which is probably another reason why it was withdrawn.

I have tried to respond to the various points that have been made, including the concerns that staff have raised. The pensions guarantee that we have provided is not a straightforward or inexpensive thing to do; the Scottish Government has made a substantial commitment, which we did because we listened to the concerns of staff members.

Margaret McCulloch asked about TUPE and the level of protection that will be provided. As a former shop steward, I know that concerns have been expressed about how effective TUPE can be, but following engagement with the United Kingdom Government, the Scottish Trades Union Congress has said that it is generally satisfied with the TUPE provisions, which prohibit gratuitous compulsory redundancies. Under TUPE, obligations are passed on to the contractor. As I have mentioned, perhaps the most important issue is that of pensions, on which we have given a guarantee.

On Alex Johnstone’s point about tolls, I welcomed the abolition of tolls in my maiden speech in Parliament. I am aware that Helen Eadie was ahead of her time in asking for a new crossing, and ahead of her time—and, I am sure, out of step with her colleagues—in asking for bridge tolls to be abolished. I can only imagine how she jumped for joy when the Scottish National Party was elected, which led in due course to both those things being guaranteed. That had not happened previously, despite the fact that—as I said in my intervention on Alex Johnstone—the tolls on the original Forth road bridge should have been abolished in 1994, when the capital costs were paid off. It is extremely important that, when Governments make such commitments on tax or charges, they follow them through. The tolls should have been abolished in 1994, and I am pleased that it was the SNP Administration that finally—with support from others, as has been mentioned—abolished them.

I mentioned at stage 1 that, at one point, it was proposed that the toll on the Forth bridge should go up to £4, which was a similar level to the Skye bridge toll. I was pleased to be involved in the campaign to abolish the Skye bridge toll, even although I still bear a conviction for refusing to pay.

I think that I have covered most of what members said in their speeches, which were very positive. It was interesting to hear from Richard Lyle about the early development of the bridge. I was but a babe in arms in the days of the ferry. Although I crossed the Forth by ferry, I do not remember having done so because I was too young. Since then—as all other members have done—I have used the bridge on many occasions.

I look forward to continuing our effective engagement. Members’ comments reflect the fact that there has been effective engagement with stakeholders, members and the people who will be most directly affected.

Commencement of the bill is scheduled to not happen until June 2015, and there is still substantial work to be done not only on the arrangements for the TUPE transfer of staff, but on the operating company contract, in order to ensure that it meets the commitments that have been made during the progress of the bill. Commitments have also been made to other stakeholders. I put on the record an offer to provide regular updates to the Infrastructure and Capital Investment Committee, including details of how the contract is developing, community engagement and the FETA staff transfer.

The bridges over the Forth play a key part in keeping Scotland moving. I am grateful for the opportunity to be part of safeguarding the future of that vital link in Scotland’s infrastructure, and am pleased to commend to members the motion “That the Parliament agrees that the Forth Road Bridge Bill be passed.”