FORTH ROAD BRIDGE BILL

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 coordinated 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.
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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 Website¹.

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)² 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”)³ 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 2001⁴ 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.

¹ 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

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.

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.  

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.

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<td><strong>Option 1</strong></td>
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<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>
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<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>
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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;

\(^{10}\) [http://www.scotland.gov.uk/About/Performance/scotPerforms/objectives/wealthierAndFairer](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.
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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)
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\(^\text{12}\). 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 project13. An Environmental Statement14 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 200515 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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