Infrastructure and Capital Investment Committee

1st Report, 2013 (Session 4)

Stage 1 Report on the Forth Road Bridge Bill

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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)

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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.¹ 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.

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

\[2 \text{http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/45633.aspx [accessed March 2013]} \]
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.”

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.”

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.”

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—

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12 Scottish Parliament Infrastructure and Capital Investment Committee, Official Report, 27 February 2013, Col 1432
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.”¹⁸

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.”¹⁹

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.”²⁰

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

¹⁹ Scottish Parliament Infrastructure and Capital Investment Committee, Official Report, 16 January 2013, Col 1271
²⁰ Scottish Parliament Infrastructure and Capital Investment Committee, Official Report, 27 February 2013, Col 1428
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.

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—

26 Scottish Parliament Infrastructure and Capital Investment Committee, Official Report, 20 February 2013, Col 1395
“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

28 Scottish Parliament Infrastructure and Capital Investment Committee, Official Report, 20 February 2013, Col 1396
29 Scottish Parliament Infrastructure and Capital Investment Committee, Official Report, 20 February 2013, Col 1396
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."

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.\(^\text{32}\)

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.”\(^\text{33}\)

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.34 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.”35

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.”

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 ...”

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 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”) 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 Road Traffic Regulation Act 1984 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
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