



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# FORTH CROSSING BILL COMMITTEE

Wednesday 17 November 2010

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**Wednesday 17 November 2010**

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**FORTH CROSSING BILL COMMITTEE**  
**13<sup>th</sup> Meeting 2010, Session 3**

**CONVENER**

\*Jackson Carlaw (West of Scotland) (Con)

**DEPUTY CONVENER**

\*Hugh O'Donnell (Central Scotland) (LD)

**COMMITTEE MEMBERS**

\*Joe FitzPatrick (Dundee West) (SNP)

\*David Stewart (Highlands and Islands) (Lab)

\*attended

**THE FOLLOWING ALSO ATTENDED:**

Mary Mulligan (Linlithgow) (Lab)

Stewart Stevenson (Minister for Transport, Infrastructure and Climate Change)

**CLERK TO THE COMMITTEE**

Sarah Robertson

**LOCATION**

Committee Room 3



## Scottish Parliament

### Forth Crossing Bill Committee

*Wednesday 17 November 2010*

[The Convener *opened the meeting at 10:35*]

### Forth Crossing Bill

**The Convener (Jackson Carlaw):** Good morning everybody and welcome to the 13<sup>th</sup> meeting of the Forth Crossing Bill Committee in 2010. As ever, I invite everyone to ensure that their mobile phones and pagers are off so that they do not interfere with the sound equipment.

This morning's business is to dispose of the stage 2 amendments following the publication of the stage 2 report. However, our first item of business is consideration of an inadmissible amendment. I welcome Mrs Mary Mulligan to the committee. She has indicated that she wishes to lodge an amendment to the bill. The proposed amendment has been ruled inadmissible under the rules set out in the Parliament's standing orders, specifically rule 9C.14.6(e). I will ask Mrs Mulligan to contribute to the detail in just a moment. However, the proposed amendment is inadmissible because the construction and operation of the route arising from it would impact on the interests of people connected with the route, and those people have not, of course, had an opportunity to comment on that possible impact.

This, in effect, is the same situation that the promoter faced when introducing the bill, in that the promoter was required to identify and notify all those people whose interests would be affected by the works proposed in the bill. Those people were then given quite an extensive period of time in which to study the bill and the accompanying documents to determine what impact the proposal might have on them, and thereafter to lodge objections setting out the nature of the objection and specifying how the objector would be adversely affected by the bill's provisions.

This is not the first time during the passage of a bill that something has occurred that has brought in a new set of prospective objectors. However, I believe that on every previous occasion it was the promoter that was the prime mover of the alteration. I cite the Waverley Railway (Scotland) Bill in that regard.

The guidance on hybrid bills states that it is for this committee to decide what material would be needed to inform prospective objectors of what the proposed amendment would involve. The committee is familiar with the detail of what Mrs

Mulligan is proposing; it was included in her objection and that of others. We considered the route options at stage 1 of the bill process in some detail, and again at the first part of stage 2 in the context of some of the objections. However, we are not looking at the substance of the proposed amendment here today; our task is to determine what material would have to accompany the proposed amendment to inform affected persons of the impact that it would have on them, and to determine what period would be required to allow them an opportunity to lodge objections.

By way of illustration, when the bill was introduced the promoter was required to produce the following to support it: a policy memorandum; explanatory notes; a financial memorandum; maps, plans and sectional plans; a book of reference; an environmental statement, which was, as the committee will be aware, a very considerable part of the presented information; and a heritable interests statement.

Before we decide on the matter as a committee, I am delighted to ask Mary Mulligan whether she would like to speak about the material that should accompany the proposed amendment. After that, we might have some questions for you, Mrs Mulligan. Over to you.

**Mary Mulligan (Linlithgow) (Lab):** Thank you very much, convener, and thank you to the committee for allowing me to make a few comments on this process. I will keep my comments short, because I know that you have already looked at the substance of the proposed amendment. However, I point out that, in fact, my proposed amendment does not seek option 2 south; it seeks a route that is more similar to the one in the "Setting Forth" document. That is material, because of the impact that it would have on people who might be affected and the issue that you just raised, convener, about ensuring that all those who would be affected have the right to comment on it.

Clearly, my immediate concern in raising this objection is about the village of Newton and the surrounding environment. However, this is also a national issue. Because of the importance of the route for commercial and business traffic, it has always seemed ridiculous to me that we could build a 21<sup>st</sup> century crossing of the Forth that leads people on to a road that is not even a trunk road. I will come back later to the strategic importance of the route.

The convener has raised points about the process and about the difficulties that my community and I have faced. It has been difficult to get the promoter to engage with our objection and to develop a coherent analysis of our proposal. Only at the assessor hearing did the promoter finally produce a plan with some outline

costings—costings that we had never had an opportunity to discuss. There has never been professional support either for the representative—in this case, the MSP—or for the local people to help them to prepare necessary information such as environmental impact assessments, ground searches, present market costs and details of the possible impact of the alternative route on people.

I compare that experience with my experience of the Airdrie to Bathgate line. For that project, my objections in relation to the positioning of stations were supported by West Lothian Council, as were the objections of colleagues. As a result, there was professional input to those objections, which sustained me and the community. That has not been possible on this occasion, because the promoter is the Government and Transport Scotland, which seem to hold all the cards. Often, the case that we have argued has seemed to be the nimby case of, “We don’t want the traffic through our village.” However the issue is much wider and relates to the national picture and to people from beyond the boundaries of Newton.

Had I known that my amendment would be inadmissible and that I would not be able to lodge it at stage 2, I might have behaved differently. I might have stayed out of the earlier discussions and reserved my position until stage 2. MSPs always expect to have the opportunity to lodge amendments at stage 2. Although the amendment is inadmissible, I still have the opportunity to lodge it at stage 3, and to await the view of the Presiding Officer. However, I am very conscious that that will not happen until the end of the bill process, which is not necessarily the time to discuss details. I am also conscious that, should the bill be delayed at that stage, we would risk losing it altogether, partly because of the timing of the upcoming elections. I do not want that to happen. Like many others around the table, I support the creation of a new Forth crossing. However, I also have a duty to protect my constituents. Therein lies the dilemma for an MSP.

I totally accept that my tactics may have been wrong, and that I did not understand the process as I should have done. However, I hope that members will accept that I am a fairly diligent MSP and was trying to do the best for my constituents—working alongside them, and presenting their objections as early as possible. That seemed to be the right thing to do, but I am left now wondering whether it was.

I welcome the fact that the committee’s agenda today contains an opportunity to consider the whole process, but members will understand my concern that the review will come too late for me and my constituents. My constituents and others

will be using what I consider to be an inappropriate route between the bridge and the M9.

I am disappointed that my amendment is inadmissible. I understand why it is inadmissible, but I would of course have liked the opportunity to pursue it further.

10:45

**The Convener:** The committee has always been entirely satisfied with Mrs Mulligan’s engagement. The concerns of her constituents always informed her contributions to our discussions at stage 1, and have done so again at stage 2.

Before we make a decision, would any other members of the committee like to contribute?

**Hugh O’Donnell (Central Scotland) (LD):** In order to understand the proposed amendment, have you an idea of what materials would be required? Is there any reason to produce less material for your proposed amendment than was required from the promoter in the first instance? Do you have a view on that? At this stage, can you provide or would you wish to provide such documents as you feel necessary?

**Mary Mulligan:** I referred to, for example, the environmental impact assessment and a consultation with those who would be affected, which would be needed to support the proposed amendment. However, I am not in a position to provide all of those; some of what would be required is fairly technical. That is why I said earlier that we need professional help. The fact that the promoter has avoided any discussion of that has left us with nothing to argue against. The promoter finally produced figures for how much it would cost at the assessor hearings stage. That figure came out of the blue to me, so we needed to go away and try to analyse it. However, how could we—an MSP and a community—challenge figures that came from the professionals, particularly when they could change fairly frequently, even during the bill process? It is difficult for us to do the necessary work to support an objection of this size without having additional support to do so.

**David Stewart (Highlands and Islands) (Lab):** Who would be affected by your proposal? Have they been involved at all in formulating it?

**Mary Mulligan:** Those involved would be any residential or business premises adjacent to the proposed new route. They have clearly had the opportunity to comment on the general principles of the bill and the fact that there would be a new Forth crossing within a few miles of their properties. However, I accept totally that they should have an opportunity to comment in more

detail on the more direct impact of the alternative route. I therefore accept that there are people who would need time. I just wonder whether, given that my proposed option was always known about and was always going to be put forward by me and the community at an early stage, it should have been part of the overall consideration. I remember attending meetings with Transport Scotland at which the alternative route was still under discussion, because it had been in “Setting Forth” and had been a consideration—sorry, a slightly different route south was considered at the early stages—so it was not as if it came out of the blue. However, because the promoter decided that it was not the preferred option, it was never considered in the necessary detail.

**The Convener:** The question for the committee in the first instance is whether we feel that there is any reason why less material ought to be available to prospective objectors arising out of this proposal than was the case for the original scheme. Has anybody heard anything that suggests that there should be less information?

**Hugh O'Donnell:** Personally, given the scale of the proposal, I cannot see any justification for there being less documentation, because that would disadvantage anyone who might object to the alternative proposal. That poses a problem for me.

**The Convener:** Is that the view of the committee?

**Members** *indicated agreement.*

**The Convener:** In your remarks, Mrs Mulligan, and in the questions, I think that we alighted on the extent of the information that would require to be produced. For example, I referred to a policy memorandum; explanatory notes; a financial memorandum; maps, plans and sections; a book of reference; an environmental statement; and a heritable interests statement. I suppose the question is—and to some extent you have addressed it in your engagement with us this morning—whether you would wish to produce that documentation or are in a position to do so. If not, I suppose that I need to ask how you would like to take matters forward and whether you wish to proceed with producing an amendment, given that you will have recognised that item 3 of our business this morning is consideration of a paper that will review the hybrid bills process. I fully appreciate your concluding remarks, and that that will be, in a sense, an after-the-event analysis in this instance. However, we would seek to address your points.

**Mary Mulligan:** I recognise the work that would need to be done, and I am mindful of the bill's timescale. I suspect that, regardless of how long you were able to give us to produce the required

information, it would be very difficult, if not impossible, to do so, so I reluctantly accept that the committee is correct that, without that information, it could not accept the proposed amendment.

**The Convener:** Therefore, formally, you will not proceed with the proposed amendment at this stage.

**Mary Mulligan:** No, I will not.

**The Convener:** I am grateful to you. Thank you very much. There will be a short suspension to allow the minister to join us.

10:51

*Meeting suspended.*

10:52

*On resuming—*

## **Forth Crossing Bill: Stage 2**

**The Convener:** Item 2 is stage 2 of the Forth Crossing Bill. I welcome the Minister for Transport, Infrastructure and Climate Change, Stewart Stevenson MSP—good morning, minister—who is accompanied by his officials Frazer Henderson, Ian Shanks, Andy Mackay and Shalani Raghavan. Welcome to you all. The officials are here to assist the minister in the course of this morning's consideration.

Committee members should have their copy of the bill, the marshalled list and the groupings of amendments.

No amendments to section 1 have been lodged.

*Section 1 agreed to.*

### **Schedule 1—Principal works**

**The Convener:** The first group of amendments is on minor changes to bill schedules: changing of road names. Amendment 1, in the name of the minister, is grouped with amendments 2 to 15, 18 to 22, 25 to 30, 41, 46 to 48, 57, 58, 60 and 61.

**The Minister for Transport, Infrastructure and Climate Change (Stewart Stevenson):** Twenty-nine of the amendments redesignate the numbering of the Kirkliston to South Queensferry road. Formerly, the road was named the A8000; it is now named the B800. The 29 amendments designate the road correctly.

The remaining five amendments in the group—amendments 25 to 28 and 41—also make a change to a road name. The City of Edinburgh Council is responsible for the section of the M9 spur to the north of the Humble railway bridge at Kirkliston. The section of the M9 spur to the south

of this point, which is the responsibility of Scottish ministers, is named in the list of public roads as the “M9 Kirkliston spur”. The section that is the responsibility of the City of Edinburgh Council is named in the council’s list of public roads as the “M9 Link Road”. The amendments bring the name of the road in line with the City of Edinburgh Council’s list of public roads.

I move amendment 1.

*Amendment 1 agreed to.*

*Amendments 2 to 15 moved—[Stewart Stevenson]—and agreed to.*

**The Convener:** The next group is on schedules 1 and 10: works and temporary possession at Scotstoun park. Amendment 16, in the name of the minister, is grouped with amendments 17 and 78 to 80.

**Stewart Stevenson:** You will be aware, convener, that a commitment was given to a number of landowners to reduce the extent of land required for the scheme in the Scotstoun area of South Queensferry. As a consequence of that commitment, the extent of works necessary to the access to Scotstoun house is to be reduced. Amendments 16 and 17 reduce the length of the improvement to that private access.

There are consequential reductions in the extent of land that is required for temporary possession at Scotstoun. The extent of land removed from the bill includes plots 910 and 934, which are covered by amendment 78. Plots 941 and 956 are also removed from the bill by virtue of amendments 79 and 80. I advise that corresponding amendments have also been made to parliamentary plan W9 and to the book of reference.

I move amendment 16.

*Amendment 16 agreed to.*

*Amendments 17 to 22 moved—[Stewart Stevenson]—and agreed to.*

**The Convener:** The next group is on schedule 1: new works and changes to existing works. Amendment 23, in the name of the minister, is grouped with amendments 24 and 102.

**Stewart Stevenson:** Amendments 23 and 24, and the part of amendment 102 that relates to works S68 and S69, are linked. They are consequent on our commitment to provide an additional pedestrian and cyclist route to the west of Queensferry. As I advised in my response to the stage 2 report, the intention is to provide a route that will follow the maintenance access through Echline fields to the east of the southern approach road to the southern bridge abutment. The route will pass under the abutment and will continue to run to the west of the southern approach road to connect with the realigned A904.

Amendments 23 and 24 and work S68 in concert will enable the construction and operation of the footway or cycle track. The consequence of providing the route is that an additional short section of maintenance access is required to provide access to a drainage basin that is proposed to be located to the west of the scheme, at Linn Mill. Work S69 provides that additional short maintenance access.

I now turn to the part of amendment 102 that relates to work S67. The amendment rights an omission. When the bill was introduced, work S67 was inadvertently omitted from the schedule. Work S67 was included, however, within the parliamentary plans for the bill, where it is shown graphically on sheet W12, as well as being specifically referenced in the accompanying legend to that plan.

I am acutely aware, as will be the committee, that rule 9C.14.6 of standing orders makes an amendment inadmissible where

“it affects a private interest and the holder of that private interest has not had the opportunity to comment on the amendment.”

I can advise the committee that the owners of the land on which the works are proposed were notified by letter—in a manner similar to that applied to other landowners affected by the works—that works would be conducted on their land.

The notifications are also included in extracts from the parliamentary plans. The notifications dated 13 November 2009 were issued in accordance with rule 9C.3.2(h) of standing orders and were sent by recorded delivery. The owners of the property were also referenced within the book of reference, as introduced. The land for the proposed works comprises plots 1202, 1203 and 1204, and those plots, together with details of ownership, can be found on pages 280, 281 and 282 respectively of the book of reference, as introduced. I can confirm that a further letter of confirmation on behalf of the owners of the land was recently issued to the clerks.

Amendment 102, accordingly, seeks to ensure completeness of the bill and its associated documentation in respect of work S67.

I move amendment 23.

*Amendment 23 agreed to.*

*Amendments 24 to 30 and 102 moved—[Stewart Stevenson]—and agreed to.*

11:00

**The Convener:** The next group is on schedules 1, 8, 9 and 10: works etc at Junction 1A on the M9.” Amendment 31, in the name of the minister,



is grouped with amendments 32, 56, 59, 69, 75 and 76.

**Stewart Stevenson:** Since the bill's introduction, we have refined the design of junction 1A. Consequently, we have been able to reduce significantly the area of land required permanently at this junction. The amendments in this group reflect our reduced need for land.

Amendments 31 and 32 remove from the bill the new means of access to land that are no longer required. Amendments 56 and 59 provide for the stopping-up of an existing access without a requirement to provide, as agreed with the owner, an alternative.

Amendments 69, 75 and 76 relate to land plots that were originally shown as being permanently acquired. The land is still required, although it is now proposed, depending on the plot, either to occupy the land temporarily during construction of the scheme or to create a servitude. The amendments accordingly reduce the impact on the owners of the land. As the committee would wish, our proposals have been discussed and agreed with the relevant owners.

I move amendment 31.

*Amendment 31 agreed to.*

*Amendment 32 moved—[Stewart Stevenson]—and agreed to.*

**The Convener:** The next group is on schedules 1, 5 and 7: works and roads relating to the A90 at the boundary between the Forth Estuary Transport Authority and Fife Council. Amendment 33, in the name of the minister, is grouped with amendments 34, 35, 42, 43 and 49 to 55.

**Stewart Stevenson:** The amendments in this group are minor and technical. They seek to update the bill schedules to reflect the split in responsibility for the A90 between the Forth Estuary Transport Authority and Fife Council.

I move amendment 33.

*Amendment 33 agreed to.*

*Amendments 34 and 35 moved—[Stewart Stevenson]—and agreed to.*

*Schedule 1, as amended, agreed to.*

*Schedule 2 agreed to.*

*Sections 2 to 4 agreed to.*

### **Section 5—Bridge marking and lighting**

**The Convener:** The next group is on bridge marking and lighting. Amendment 36, in the name of the minister, is grouped with amendments 37, 38 and 101.

**Stewart Stevenson:** The amendments in this group ensure that in constructing and maintaining the Forth crossing, the Scottish ministers seek the expertise and act on the advice of the operator of Edinburgh airport in meeting specific obligations in respect of lighting and marking.

Amendment 36 sets out the obligation to ensure that the structure is adequately marked and lit; amendment 37 sets out the obligation to consult the operator of Edinburgh airport; and amendment 38 sets out what ministers must do after having consulted the operator.

As the committee would wish, extensive consultation has taken place with the operator of Edinburgh airport so that all parties can be assured that the amendments are both appropriate and proportionate. It is critically important to the appropriate conduct of the works that the duties regarding, for example, marking and lighting are observed at all times during the construction and operation of the crossing and its associated works. Accordingly, I lodged amendment 101 to bring the provisions that impose those duties into force at the same time as the provisions that empower the construction of the works. Therefore, the Parliament can be assured that the works and the manner of their construction as described in sections 1 to 7 will be implemented simultaneously.

I move amendment 36.

*Amendment 36 agreed to.*

*Amendments 37 and 38 moved—[Stewart Stevenson]—and agreed to.*

*Section 5, as amended, agreed to.*

### **Section 6—Interference with navigation**

**The Convener:** The next group is on interference with navigation and marine activity licensing. Amendment 39, in the name of the minister, is grouped with amendment 40.

**Stewart Stevenson:** It has been brought to our attention that the bill ought to have provided a power to interfere with a right of navigation in the Firth of Forth within the wider act limits rather than the narrower limits of deviation. By using the term "limits of deviation", we would have been able only to interfere with navigation in water in which, or over which, the bridge is to be constructed. The reality, however, is that we will need to interfere and control navigation in waters bordering the limits of deviation for the purposes of, for instance, positioning barges. The water bordering the limits of deviation is shown on the parliamentary plans, sheet numbers W12 and W13, as being "the Limit of Land to be Acquired or Used".

Amendment 39 therefore proposes a modification to the power in section 6 so as to

allow interference with navigation to apply both within the limits of deviation and within the limit of land to be acquired or used. Those two limits are defined in section 78, when referenced together, as being “the Act limits”. The manner by which the power can be exercised remains unchanged, in that interference can be exercised only so as to carry out or maintain the Forth crossing works or where the Forth crossing works may endanger navigation. Furthermore, ministers must consult the navigation authority before exercising the power to interfere with navigation. The committee may be assured that we have advised the navigation authority of the text and lodging of the amendment.

Amendment 40 is a technical amendment that seeks to reflect changes made to the Marine (Scotland) Bill. At the time of the introduction of the Forth Crossing Bill, the licensing provisions in the Marine (Scotland) Bill were contained in part 3 of that bill. During the course of the parliamentary process, the bill was altered and marine licensing is now provided for in part 4 of the Marine (Scotland) Act 2010. Amendment 40 therefore simply seeks to ensure that the correct references in the Marine (Scotland) Act 2010 are applied in the Forth Crossing Bill.

I move amendment 39.

*Amendment 39 agreed to.*

*Section 6, as amended, agreed to.*

*Section 7 agreed to.*

### **Section 8—Marine (Scotland) Act 2010**

*Amendment 40 moved—[Stewart Stevenson]—and agreed to.*

*Section 8, as amended, agreed to.*

*Sections 9 to 11 agreed to.*

### **Schedule 3—Special roads**

*Amendment 41 moved—[Stewart Stevenson]—and agreed to.*

*Schedule 3, as amended, agreed to.*

*Section 12 agreed to.*

*Schedule 4 agreed to.*

### **Schedule 5—Existing roads to become trunk roads on date determined by Ministers**

*Amendments 42 and 43 moved—[Stewart Stevenson]—and agreed to.*

*Schedule 5, as amended, agreed to.*

### **Section 13—Power to transfer roads**

**The Convener:** The next group is on roads: ministers and other roads authorities. Amendment 44, in the name of the minister, is grouped with amendments 45, 62 and 63.

**Stewart Stevenson:** I am promoting amendments 44 and 45 so that the provisions of this bill are all square with those of the Roads (Scotland) Act 1984. In essence, the amendments ensure that in transferring a road, once built, to a local roads authority, liabilities attached to the construction of the road will remain with the Scottish ministers. That is usual practice.

Amendments 44 and 45 therefore correct an oversight in the bill as introduced. As the committee would expect, we have discussed the provisions in the amendments with the relevant local roads authority.

The associated amendment, amendment 62, relates to works on already existing roads belonging to a local roads authority. It fulfils a commitment given to the City of Edinburgh Council on 2 August and is in accordance with a recommendation of the committee in its stage 2 report. Although the recommendation was in respect of section 13, we are also proposing an amendment to section 18, as that is where existing local roads are dealt with in the bill.

Amendment 62 will create a newly expanded section 18, placing ministers under a duty to consult and consider representations from the relevant local roads authority. It also ensures that particular liabilities arising from the works on those roads will remain with the Scottish ministers, and provides for an appropriate dispute resolution process should liabilities be contested.

The amended section 18, when read together with the revised section 13, ensures a consistent approach to consultation and the application of liabilities between the Scottish ministers and the local roads authority. That consistent approach is in respect of road works, whether they be related to new roads that are subsequently transferred to the local roads authority, or to works carried out on existing local roads. Accordingly, the committee can be assured that its recommendation has been appropriately discharged.

Finally, amendment 63 seeks to place ministers under a duty to consult the relevant roads authority when carrying out section 19 access works. In this case, consultation must occur before the commencement of any work to provide or improve access works. Ministers are to consider representations by the roads authority on the carrying out of such works.

I move amendment 44.

*Amendment 44 agreed to.*

*Amendment 45 moved—[Stewart Stevenson]—and agreed to.*

*Section 13, as amended, agreed to.*

*Schedule 6 agreed to.*

*Section 14 agreed to.*

#### **Schedule 7—Roads to be stopped up**

*Amendments 46 to 55 moved—[Stewart Stevenson]—and agreed to.*

*Schedule 7, as amended, agreed to.*

*Section 15 agreed to.*

#### **Schedule 8—Means of access to be stopped up**

*Amendments 56 to 61 moved—[Stewart Stevenson]—and agreed to.*

*Schedule 8, as amended, agreed to.*

*Sections 16 and 17 agreed to.*

#### **Section 18—Scottish Road Works Register**

*Amendment 62 moved—[Stewart Stevenson]—and agreed to.*

*Section 18, as amended, agreed to.*

#### **Section 19—Access to public roads**

*Amendment 63 moved—[Stewart Stevenson]—and agreed to.*

*Section 19, as amended, agreed to.*

*Sections 20 to 22 agreed to.*

#### **Schedule 9—Land which may be acquired**

11:15

**The Convener:** The next group is on schedules 9 and 10: temporary possession instead of land acquisition. Amendment 64, in the name of the minister, is grouped with amendments 65 and 77.

**Stewart Stevenson:** Plots 840 and 843 shown on parliamentary plan L8 were proposed to be acquired permanently to allow construction of the scheme. Consultations have been held with the owner of the land and I am happy to say that we have determined that we can still construct the scheme while taking only a lesser right of temporary occupation. As a result, the amendments in this group propose that plots 840 and 843 are removed from schedule 9 and, instead, included in schedule 10, with the effect of authorising only the lesser right of temporary occupation.

I move amendment 64.

*Amendment 64 agreed to.*

*Amendment 65 moved—[Stewart Stevenson]—and agreed to.*

**The Convener:** The next group is on schedules 9 and 10: land acquisition and temporary possession at Rosyth. Amendment 66, in the name of the minister, is grouped with amendments 72 and 85.

**Stewart Stevenson:** Convener, under the bill as introduced we proposed to acquire permanently plot 1520 and part of plot 1521 to allow construction of environmental mitigation associated with the St Margaret's marsh site of special scientific interest. Consultations have been held with the owner of the land and we have determined that we can still construct the scheme with a lesser right of access through the creation of a permanent servitude. Accordingly, plot 1520 has been replaced in the bill with plot 1530, and part of plot 1521 has been replaced with plot 1529, both with the lesser rights of servitude proposed. As such, plots 1529 and 1530 have been included in part 2 of schedule 9.

Amendment 72 also removes from the bill plot 2121 near Halbeath, as shown on parliamentary plan L21. We have been able to confirm through refinement of the scheme design that the land is no longer required.

Amendment 85 relates to plots that will be required for the purposes of a construction site near Rosyth. Plots 1525, 1526, 1527 and 1528 shown on parliamentary plan L15 have been created from the plots previously numbered 1508 and 1509. It is intended to occupy this land temporarily as a site compound during the construction of the scheme. The new plots that have been created form parts of the accesses to this land. We have confirmed with the owner of the land, Scarborough Muir Group Ltd, that the existing accesses within these plots of land can be used jointly during construction of the scheme so as to permit access by the owner of the land to the wider holding whilst construction works are carried out. The plots have been created and listed separately in schedule 10 and in the book of reference in accordance with this commitment. Parliamentary plan L15 has also been amended.

I move amendment 66.

*Amendment 66 agreed to.*

**The Convener:** The next group is on schedule 9: other changes on land acquisition. Amendment 67, in the name of the minister, is grouped with amendments 103, 70 and 71.

**Stewart Stevenson:** This grouping covers miscellaneous plots. I will explain briefly the purposes of each proposed amendment.

Amendment 67 relates to plots 1659 and 1660, which are required for ancillary works for the scheme. Prior to the introduction of the bill, we undertook extensive title searches and these confirmed that the land was owned by the Scottish ministers. As it is not necessary for ministers to acquire land that is already in ownership, plots 1659 and 1660 should be removed from schedule 9.

Amendment 103 relates to plot 1911 shown on parliamentary plan L19, which is required for the construction of ancillary works and will bring into the ownership of the Scottish ministers the solum of parts of the M90 that are not currently within their ownership. The plot was included in the original parliamentary plans and in the book of reference. The owner of the land is unknown. This amendment provides that the plot is listed appropriately in schedule 9 of the bill.

Convener, we have been able, through continued investigations into land ownership, to establish that plot 863 is owned by the same party as the adjacent plot 845. As such, we have merged the two plots on parliamentary plan L8 and in the book of reference, but have retained the plot number 845. Under amendment 70, plot 863 is removed from the parliamentary plans and the book of reference and must therefore be removed from schedule 9.

Finally, I turn to amendment 71, which relates to plot 1289. This plot is part of the Linn Mill burn, where drainage works will be undertaken as part of the scheme. After consultation with the owner of the land, we have been able to confirm that we will have sufficient rights under a servitude to undertake the works necessary for the scheme and have agreed with the owner of the land to lodge an amendment with the lesser rights included. It is therefore necessary to include plot 1289 in schedule 9.

I move amendment 67.

*Amendment 67 agreed to.*

*Amendments 103 and 69 to 72 moved—[Stewart Stevenson]—and agreed to.*

*Schedule 9, as amended, agreed to.*

*Sections 23 and 24 agreed to.*

#### **Section 25—Extinction of real burdens and servitudes etc**

**The Convener:** The next group is on land acquisition and entry. Amendment 73, in the name of the minister, is grouped with amendments 74, 87 and 88.

**Stewart Stevenson:** These amendments are specifically designed to excite only lawyers.

It has been brought to our attention that there is a possibility—albeit a remote one—that an interpretation could be placed on section 25 under which, for instance, an interest in land, such as a servitude having been acquired under the terms of section 22, could be extinguished under section 25 as soon as it had been acquired, even if it were wished to acquire and retain the servitude. Amendment 73 seeks to solve that potential, if remote problem.

On amendment 74, members will be aware that section 46 is explicit about the effect of temporary possession on servitudes, real burdens and development management agreements. However, there is no corresponding explicit provision in respect of leases and amendment 74 seeks to address that matter.

As you will appreciate, my officials have performed a number of checks on the land to be temporarily possessed to assure ourselves that there are no leases in force. Although those checks have not indicated any such leases, we need to make provision for the remote possibility of the existence of a lease in case there is then doubt as to what would happen to it and whether it would be suspended or extinguished. Accordingly, amendment 74 seeks to make the necessary provision in respect of leases, and amendment 88 seeks to make it explicit that compensation will be payable to both the tenant and landlord in relation to the interest in the land that they have lost or the enjoyment of the land that has been disturbed by the lease's extinguishment.

Finally, amendment 87 is, thankfully, straightforward and seeks to improve the clarity of drafting to ensure that the three days' notice period for subsequent entry to land applies only to entry to land for the purposes of section 38. In all other respects, at least 28 days' notice is required.

I move amendment 73.

*Amendment 73 agreed to.*

*Section 25, as amended, agreed to.*

*Sections 26 to 36 agreed to.*

#### **Section 37—Temporary possession of land**

*Amendment 74 moved—[Stewart Stevenson]—and agreed to.*

*Section 37, as amended, agreed to.*

#### **Schedule 10—Temporary possession of land**

*Amendments 75 to 80 moved—[Stewart Stevenson]—and agreed to.*

**The Convener:** The next group is on additional land listed for temporary possession. Amendment

81, in the name of the minister, is grouped with amendment 86.

**Stewart Stevenson:** These amendments seek to make further adjustments to our land requirements.

Amendment 81 relates to land south of South Queensferry adjoining the B800. Plot 978 was part of plot 907 shown on parliamentary plan L9 and listed in the book of reference as introduced. After further design and consideration of the construction methodology likely to be employed, we have determined that it is not necessary to acquire part of the original plot 907 permanently and have proposed to take temporary possession of part of the land to allow the scheme's construction. That land has been shown on parliamentary plan L9 as plot 978 and a corresponding amendment has been made to parliamentary plan W9 and the book of reference.

Amendment 86 will impact on two plots in Fife, namely plot 1919 and plot 2121. Plot 1919 was shown on parliamentary plan L19 and listed in the book of reference, as introduced, to be permanently acquired. Again through further refinement of the design, we have been able to remove the need for the permanent acquisition of plot 1919, although a smaller area of temporary occupation will still be necessary. As such, plot 1919 is listed in schedule 10. I am also able to confirm that, as a consequence of refinement of the scheme design, the land numbered plot 2121 shown on parliamentary plan L21 is no longer required for the scheme.

I move amendment 81.

*Amendment 81 agreed to.*

**The Convener:** The next group is on minor changes on the land listed for temporary possession and listed buildings. Amendment 82, in the name of the minister, is grouped with amendments 83, 84 and 89.

**Stewart Stevenson:** The amendments in this group seek to make minor changes on land listed for temporary possession and to clarify the name of a particular property.

The scheme includes alterations to the existing footway and cycle track in Fife that connects to the Forth road bridge within the limit of land to be acquired or used, which forms part of plots 1306, 1329 and 1330 shown on parliamentary plan L13. As the land in those plots is to be occupied temporarily, it is necessary by virtue of amendments 82, 83 and 84 to include in schedule 10 amendments setting out that alterations to the existing footway and cycle track may be carried out.

On amendment 89, members will be aware that, in the bill as introduced, St Margaret's Hope was

called Admiralty house. However, the listing document describes the building as being the "former Admiralty House" and amendment 89 seeks to bring the name of St Margaret's Hope in line with the description in the listing document.

I move amendment 82.

*Amendment 82 agreed to.*

*Amendments 83 to 86 moved—[Stewart Stevenson]—and agreed to.*

*Schedule 10, as amended, agreed to.*

*Sections 38 and 39 agreed to.*

#### **Section 40—Notice of entry**

*Amendment 87 moved—[Stewart Stevenson]—and agreed to.*

*Section 40, as amended, agreed to.*

*Sections 41 to 53 agreed to.*

#### **Section 54—Compensation: entering and using land temporarily**

*Amendment 88 moved—[Stewart Stevenson]—and agreed to.*

*Section 54, as amended, agreed to.*

*Sections 55 to 63 agreed to.*

#### **Schedule 11—Listed buildings: authorised works**

*Amendment 89 moved—[Stewart Stevenson]—and agreed to.*

*Schedule 11, as amended, agreed to.*

*Sections 64 to 69 agreed to.*

#### **Section 70—Control of noise: Control of Pollution Act 1974**

**The Convener:** The next group is on noise management. Amendment 90, in the name of the minister, is grouped with amendments 91, 92 and 97.

11:30

**Stewart Stevenson:** This will be a rather longer contribution than some that have been made so far, in view of the importance of this part of the bill.

The subject of construction noise is a matter that exercised the committee at stage 1 and has, rightly, taken up more time than anything else. We are all aware that noise can be a major irritant, so it is important that we have the best possible management process and controls in place.

Accordingly, we have given significant consideration to the views of those parties who

objected to the bill on the grounds of the application of section 70 and 71. We have engaged at length with West Lothian Council, Fife Council and the City of Edinburgh Council to develop in greater detail the noise management process that is to be implemented during the construction of the scheme, which builds upon the process that is set out in the code of construction practice, as introduced.

We have made a number of significant revisions to the code of construction practice to address specific concerns that were raised by the local authorities. The revisions include establishing a noise liaison group, removing noise level thresholds and defining how compliance with the environmental statement would apply and be assessed, and we have included provisions regarding maximum noise levels.

Amendment 90 seeks to amend the provisions of section 70, which will give full effect to the noise management process that is now defined but, importantly, retain the ability of the local authorities to have a statutory mechanism by which to independently challenge and control the management process and the contractor's undertaking of construction works.

Amendment 90 will apply the Control of Pollution Act 1974 to the Forth crossing works, which means that local authorities will retain their power to serve notice on the contractor to control noise and vibration during construction works. There will, however, be a ground of appeal to a sheriff that the construction works were being undertaken in accordance with the minister's duties in relation to noise in the code of construction practice.

As the committee may be aware, the 1974 act already includes a right of appeal to a notice served. One of the grounds of appeal is that the local authority did not have regard to the need for ensuring that the best practicable means were employed to minimise noise. The proposed amendment introduces more stringent requirements in order to benefit from the new ground of appeal. Ministers must demonstrate compliance with the noise and vibration elements of the code of construction practice. That is in addition to ministers being required to demonstrate that best practicable means were being employed to minimise noise and vibration.

Amendment 92 brings forward similar measures in relation to statutory nuisance under the Environmental Protection Act 1990. It will allow local authorities to serve notice on the contractor to control noise and vibration during construction works if they believe that a statutory nuisance exists. Again, there will be a ground of appeal to a sheriff that the construction works were being, or were going to be, undertaken in accordance with

the ministers' duties in relation to noise in the code of construction practice.

The 1990 act already includes a ground of appeal to a notice served, which is that best practicable means were being employed to prevent or counteract the effect of the nuisance. Amendment 92, in line with the commitments that were given by my officials during the assessor hearings, introduces more stringent requirements on the contractor to be able to benefit from the ground of appeal. The contractor will have to demonstrate compliance with the noise elements of the code of construction practice, in addition to being able to demonstrate that best practicable means were being employed to minimise noise and vibration.

The amendment brings in a similar ground of appeal to any application by an aggrieved person in relation to an alleged statutory nuisance under section 82 of the 1990 act.

I note that, having heard evidence on this matter at the hearings, the assessor recommended, in his report to the committee, that

"subject to scrutiny of detail, the Committee give favourable consideration to the amendments which the promoter proposes to bring forward".

I fully agree with the assessor's findings and accordingly propose this amendment to the bill.

Amendments 91 and 97 are consequential drafting amendments.

I move amendment 90.

**David Stewart:** You referred to the importance of noise management to this committee and the local community. In light of your letter to the convener, can you confirm that the proposed amendments have the unqualified support of the local authorities?

**Stewart Stevenson:** My officials have worked hard with all three local authorities. The amendments that we have lodged reflect discussions with the local authorities. To take every opportunity to catch any remaining concerns, the amendments were provided to the local authorities about a week ago, and we have had no further input. I am therefore satisfied that the amendments meet the local authorities' needs.

**David Stewart:** As you know, objectors expressed concerns at the hearings about the independence and the role of the employer's representative in the process. Will you comment on those concerns in the context of the amendments?

**Stewart Stevenson:** The employer's representative acts in effect for the minister, as the purchaser of the works that are being undertaken. Of course, ministers have duties under the bill and

the code of construction practice. I am therefore satisfied that the employer's representative is independent of the contractor. The representative will protect the discharge of ministerial duties and thereby the interests of people who live and are in the area of the works.

**Hugh O'Donnell:** At the hearings on objections, "best practicable means" were said to be at

"the heart of ... noise management and control".

Will you comment on that observation in the context of the amendments?

**Stewart Stevenson:** A key aspect that is at the heart of the matter is the fundamental approach. The code of construction practice is designed to incorporate all the necessary measures to protect people's interests. The noise liaison group's creation is important to that. The contractor will have to explain in advance to the group that the best practicable means are being deployed.

The emphasis in our approach is to avoid noise but to have statutory remedies if noise happens. Our focus is not on catching and dealing with noise when it happens but—particularly through the noise liaison group—on ensuring that we do not create noise at the outset, by embedding good processes that will prevent noise that could lead to any disturbance. The important point is that we will reduce noise to the ineluctable minimum through good processes. Through the noise liaison group, we will agree at the outset those processes and what the outcomes must be.

**Hugh O'Donnell:** Will the sheriff have the same role in the defence provision as in the Control of Pollution Act 1974 and the Environmental Protection Act 1990? Will amendment 90 remove the discretion to stop work that would otherwise be available? If so, why should that power not be available to the sheriff?

**Stewart Stevenson:** The sheriff will have the same role as that under preceding legislation; that is not different. Our fundamental focus is on ensuring that noise does not happen. It will be a defence that the code of construction practice, which is an adjunct to the bill, and the arrangements under the noise liaison group have been put in place. However, that leaves local authorities with the necessary powers to deal with noise nuisance. That is the change that we have proposed in response to concerns that have been expressed as the bill has proceeded through its parliamentary process.

**Hugh O'Donnell:** I take on board what you say, but you have not made it clear why the power should not be available to the sheriff.

**Stewart Stevenson:** If I did not make it clear earlier, I say that the sheriff's powers will not change.

**Joe FitzPatrick (Dundee West) (SNP):** The minister says that the contractor will try to ensure that noise does not happen but, if it does, the ultimate sanction will be serving an abatement notice. It would be good to hear what implications that would have for the contractor. Is that sanction serious enough to ensure that the contractor engages with the process of preventing the noise from happening in the first place, so that we never need to serve such a notice?

**Stewart Stevenson:** When my officials responded to inquiries from the assessor, it was indicated that the cost of stopping work for a day could be as much as £1 million. Of necessity, the figure is approximate, because it depends on circumstances. That is a risk for the contractor. It is clear that, regardless of anything else, that financial risk will motivate the contractor to avoid such an eventuality.

**Joe FitzPatrick:** We also received representations from local authorities that were concerned about a possible weakening of their ability to protect the public. For the record, can you assure us that the code of construction practice does not restrict local authorities' ability to protect the public effectively?

**Stewart Stevenson:** It is true that the bill as introduced restricted local authorities' powers. Essentially, the amendments that are before the committee set aside those restrictions and restore local authorities' position. In the noise liaison group, we are bringing authorities directly into the planning process, to develop a noise management regime. The process that the Parliament has adopted in respect of the issue has been helpful and has left authorities in a stronger position. Indeed, they are probably in a stronger position in relation to this project than in relation to others.

*Amendment 90 agreed to.*

*Amendment 91 moved—[Stewart Stevenson]—and agreed to.*

*Section 70, as amended, agreed to.*

#### **Section 71—Statutory nuisance: Environmental Protection Act 1990**

*Amendment 92 moved—[Stewart Stevenson]—and agreed to.*

*Section 71, as amended, agreed to.*

*Sections 72 and 73 agreed to.*

#### **Section 74—Changes to Parliamentary plans or book of reference**

**The Convener:** The next group is on changes to plans, sections, books of reference and the code of construction practice. Amendment 93, in

the name of the minister, is grouped with amendments 95, 96, 98, 99 and 100.

**Stewart Stevenson:** Amendment 93 is a technical amendment. However, as it affects court procedure, I am duty bound to provide a full explanation.

As members know, section 74 provides procedure for making changes to the parliamentary plans or book of reference subsequent to the bill coming into force. The section provides that, before making a summary application to the sheriff court for modification, the applicant must give notification of the proposal to the owner and occupiers of any land that is affected at least 10 days before the application is made in court. Section 74(4) provides that the recipient of such a notice may give a counter-notice to the sheriff within 10 days of the notice being received.

The procedure does not sit well with the court procedure for summary applications. The effect of subsections (3) and (4) could be that the recipient of a notice lodges a counter-notice with the sheriff before the court even has the initial application.

Amendment 93 links section 74 better with the standard rules of procedure for summary applications. The rules provide that an applicant receives from the court a warrant of citation for intimation on interested persons, which would encompass the owners and occupiers of any land that is affected. That provides them with an opportunity to lodge answers and a date to attend court, if they wish to make representations. If answers are lodged, the court will hold a hearing to determine the application.

The procedure already ensures that persons with an interest have an opportunity to be heard in relation to any proposed corrections or modifications. Accordingly, section 74 can be amended to remove subsections (4) and (5).

I turn to amendments 95, 96, 98, 99 and 100. As members are aware, section 78 of the bill currently provides that the definitions of the code of construction practice, the book of reference and the parliamentary plans refer to the documents as introduced and not as subsequently revised. The proposed amendments enable the definitions to include revisions to the documents. The revisions have been made as a consequence of our work, either with affected parties or in the light of recommendations by the committee. If and when the bill becomes an act, the amendments will ensure that the reference to the documents is to the latest versions rather than to the versions as introduced.

I move amendment 93.

*Amendment 93 agreed to.*

*Section 74, as amended, agreed to.*

*Section 75 agreed to.*

## **Section 76—Ancillary provision**

11:45

**The Convener:** The next group is on ancillary provision. Amendment 94, in the name of the minister, is the only amendment in the group.

**Stewart Stevenson:** As members are aware, section 76 of the bill as drafted prevents the application of affirmative procedure. That was deliberate, as the policy was for minor modifications not to be subject to affirmative procedure. Having noted the recommendations of the Subordinate Legislation Committee at stage 1, I appreciate that there is a concern that, in certain circumstances, the exercise of ancillary powers should be subject to affirmative procedure. I have lodged amendment 94 in accordance with that recommendation. I thank the Subordinate Legislation Committee for bringing the matter to my attention.

I move amendment 94.

*Amendment 94 agreed to.*

*Section 76, as amended, agreed to.*

*Section 77 agreed to.*

## **Section 78—Interpretation**

*Amendments 95 to 100 moved—[Stewart Stevenson]—and agreed to.*

*Section 78, as amended, agreed to.*

## **Section 79—Commencement**

*Amendment 101 moved—[Stewart Stevenson]—and agreed to.*

*Section 79, as amended, agreed to.*

*Section 80 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the bill. I thank the minister and his officials for their support this morning. We will give them a short opportunity to depart.

**Stewart Stevenson:** I thank the convener and all members of the committee for their assistance.



## Standing Orders (Hybrid Bills)

11:47

**The Convener:** As has been noted, the Forth Crossing Bill is the first hybrid bill to be introduced to the Scottish Parliament. The procedures that are used combine those for public and for private bills, both of which have been used many times previously. It is not within the committee's remit to examine the standing orders of the Parliament—that task falls to the Standards, Procedures and Public Appointments Committee—but it is useful for us to provide feedback to that committee on our experience of the rules. I scheduled this item before we had notice of Mrs Mulligan's proposed amendment; in light of the discussion that subsequently took place, it was fortunate that we already had the item on the agenda.

Members have indicated that they have no points to make in relation to paper FCB/S3/10/13/3. Does the committee agree to delegate to me the task of signing off the final paper by the end of March 2011 and that comments from members should be submitted by correspondence by the end of January 2011?

**Members indicated agreement.**

*Meeting closed at 11:48.*



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