

FORTH ROAD BRIDGE ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 and the schedule - Trunk roads

6. **Section 1** provides for the length of road described in the schedule (which includes the road over the FRB) to become a trunk road. Presently that length of road is managed and maintained by FETA. As a trunk road it will fall under the management and maintenance of the Scottish Government in its capacity as the roads authority in terms of the Roads (Scotland) Act 1984¹ (the 1984 Act). The length of road in question is described in the Schedule to the Act.
7. Subsection (2) prevents property and liabilities transferring to the Scottish Government on account of the road becoming a trunk road. Certain enactments (specifically sections 80 and 112 of the 1984 Act) provide that when a road becomes a trunk road certain property and liabilities transfer automatically to the roads authority (in this case the Scottish Government). As section 2 of the Act will transfer all of FETA's property and liabilities to the Scottish Government it is unnecessary to have any property or liabilities transfer under the 1984 Act and having more than one enactment bearing to transfer the same property and liabilities could potentially confuse the legal basis of transfer. Section 1(2) therefore ensures that section 2 will be the sole basis for the Scottish Government inheriting all of FETA's property and liabilities.

Section 2 – Transfer of property, liabilities etc. to Scottish Ministers

8. **Section 2** of the Act provides that all of FETA's property including the bridge itself, the site office, plant and equipment will be transferred into ownership of the Scottish Government. FETA's liabilities, including past service pension contributions, will also be transferred to the Scottish Government.
9. When FETA was established in 2002, it inherited the property and liabilities of its predecessor, the Forth Road Bridge Joint Board (the Joint Board). As an effect of that transfer, anything done by, on behalf of or in relation to the Joint Board was treated as having been done by, on behalf of or in relation to FETA and references to FETA were substituted in place of references to the Joint Board in contracts and other legal documents. Subsections (2) and (3) make similar provision to ensure that the Scottish Government inherit all of FETA's property and liabilities. The effect of those subsections is extended by section 6(2)(a) so that any residual rights, property and liabilities of the Joint Board also transfer to the Scottish Government.

Section 3 – Transfer of staff

10. **Section 3** provides that the employees of FETA will be transferred from the employment of FETA to the bridge operating company appointed by the Scottish Government to carry out the functions of managing and maintaining the FRB. The Act provides that the TUPE Regulations apply to this transfer.

¹ http://www.legislation.gov.uk/ukpga/1984/54/pdfs/ukpga_19840054_en.pdf

11. The TUPE regulations contain specific details about the effect of a transfer. Generally, the effect of the regulations is to preserve the continuity of employment and terms and conditions of employees when a relevant transfer takes place. This means that employees employed by FETA when FETA is dissolved, automatically become employees of the bridge operating company.

Section 4 – Dissolution of Forth Estuary Transport Authority

12. Once the road over the FRB has been trunked and the property and assets of FETA have been transferred to the Scottish Government, FETA will no longer have any functions or purpose. The Act will therefore dissolve FETA.
13. FETA was established by the Forth Estuary Transport Authority Order 2002² (the 2002 Order). The Forth Road Bridge Confirmation Acts contain the residual powers inherited by FETA from its predecessor the Joint Board. As the Scottish Government has the authority to undertake the functions carried out by FETA, the 2002 Order and Confirmation Acts are no longer required.

Section 5 - Byelaws

14. **Section 5** makes provision in relation to byelaws made by FETA and its predecessor the Joint Board. It provides that those byelaws continue to have effect despite the revocation of the 2002 Order, which provided the legal basis for FETA making byelaws and the Joint Board's byelaws continuing in force after FETA succeeded it. The byelaws continue to have effect as they did before the 2002 Order's revocation, except that references in the byelaws to FETA or (by virtue of section 6(2)(b)) the Joint Board, are to be read as references to the Scottish Government. Where, for instance, the byelaws refer to "an officer authorised by or on behalf of the Joint Board", that will be read as a reference to an officer authorised by or on behalf of the Scottish Government.
15. As the roads authority, the Scottish Government will have powers under the Road Traffic Regulation Act 1984³ Act to make subordinate legislation in relation to traffic management. Section 5 extends the Scottish Government's powers under section 1 of the Road Traffic Regulation Act so that a traffic management order under that section can be used to revoke earlier byelaws.

² http://www.legislation.gov.uk/ssi/2002/178/pdfs/ssi_20020178_en.pdf

³ <http://www.legislation.gov.uk/ukpga/1984/27/contents>