

FORTH ROAD BRIDGE ACT 2013

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND TO THE ACT

3. This Act paves the way for the Scottish Government to contract a single bridge operating company to carry out the management and maintenance of –
 - the Forth Road Bridge (FRB),
 - the Queensferry Crossing (new Forth Crossing), and
 - the connecting roads from the M90 Junction 3 Halbeath in the north through to the M9 Junction 1a in the south.
4. In order to contract out the functions of managing and maintaining the FRB, the Scottish Government must take those functions from the Forth Estuary Transport Authority (FETA) (the statutory body which presently fulfils the functions). Accordingly, the Act –
 - makes the road over the FRB a trunk road (which means, like all trunk roads in Scotland, it comes under the Scottish Government’s management),
 - transfers all of FETA’s property and liabilities to the Scottish Government, and
 - dissolves FETA.
5. Rather than transfer FETA’s employees to the Scottish Government, only for them to be transferred to the contracted bridge operating company, the Act transfers FETA’s employees directly into the employment of the bridge operating company and ensures the Transfer of Undertakings (Protection of Employment) Regulations 2006¹ (the TUPE regulations) apply to the transfer.

COMMENTARY ON SECTIONS

Section 1 and the schedule - Trunk roads

6. [Section 1](#) provides for the length of road described in the schedule (which includes the road over the FRB) to become a trunk road. Presently that length of road is managed

¹ http://www.legislation.gov.uk/uksi/2006/246/pdfs/ukxi_20060246_en.pdf

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 1984² (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.
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 2002³ (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.

² http://www.legislation.gov.uk/ukpga/1984/54/pdfs/ukpga_19840054_en.pdf

³ http://www.legislation.gov.uk/ssi/2002/178/pdfs/ssi_20020178_en.pdf

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 1984⁴ 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.

PARLIAMENTARY PROCEEDINGS

16. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, and the references to the official report of those proceedings. It also shows the dates on which Committee Reports and other papers relating to the Act were published, and references to those reports and other papers.

<i>Proceedings & Reports</i>	<i>Reference</i>
<i>INTRODUCTION</i>	
The Bill as introduced, 11 December 2012	SP Bill 20 Session 4 (2012)
<i>STAGE 1</i>	
<i>(a)Infrastructure and Capital Investment Committee</i>	
1 st meeting, 16 January 2013	Col 1266 - 1277
3 rd meeting, 06 February 2013	Col 1333 - 1341
4 th meeting, 20 February 2013	Col 1393 - 1401
5 th meeting, 27 February 2013	Col 1428 - 1437
7 th meeting, 13 March 2013	Meeting held in private
<i>(b)Finance Committee</i>	
1 st meeting, 09 January 2013	Meeting held in private
<i>(c)Subordinate Legislation Committee</i>	
3 rd meeting, 22 January 2013	Col 727
<i>(d)Consideration by the Parliament</i>	
Stage 1 Debate, 26 March 2013	Col 18210 - 18237

⁴ <http://www.legislation.gov.uk/ukpga/1984/27/contents>

*These notes relate to the Forth Road Bridge Act 2013
(asp 8) which received Royal Assent on 28 June 2013*

<i>Proceedings & Reports</i>	<i>Reference</i>
<i>STAGE 2</i>	
<i>(a) Infrastructure and Capital Investment Committee</i>	
10th meeting, 01 May 2013	Col 1643 - 1647
<i>STAGE 3</i>	
<i>Consideration by the Parliament</i>	
Stage 3 Debate, 23 May 2013	Col 20251 - 20277
<i>Royal Assent</i>	
28 June 2013	Forth Road Bridge Act 2013 (asp 8)