

# **FORTH CROSSING BILL**

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## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

### **CONTENTS**

1. As required under Rule 9C.3 of the Parliament's Standing Orders, the following documents are published to accompany the Forth Crossing Bill introduced in the Scottish Parliament on 16 November 2009:

- Explanatory Notes (pages 2 to 40);
- a Financial Memorandum (pages 41 to 56);
- a Heritable Interests Statement (pages 57 to 86);
- an Assignment of Copyright and Licence under rule 9C.3.2(i) (page 87);
- a Scottish Government Statement on legislative competence (page 87); and
- the Presiding Officer's Statement on legislative competence (page 87).

2. A Policy Memorandum is printed separately as SP Bill 33–PM.

3. In addition to the accompanying documents referred to in paragraphs 1 and 2 above which are published by the Parliament, the following materials, published separately by the Scottish Ministers, accompany the Bill:

- maps, plans, sections and books of reference under Rule 9C.3(2)(g)(ii); and
- an Environmental Statement under Rule 9C.3(2)(g)(iii).

## **EXPLANATORY NOTES**

### **INTRODUCTION**

4. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

5. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. 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.

### **THE BILL**

6. The Bill seeks powers for the Scottish Ministers to construct a new crossing over the Firth of Forth to the west of the Forth Road Bridge. The scheme comprises:

- the construction of the new crossing and connecting roads to link to the road network;
- the upgrading of existing roads and junctions; and
- changes to the designation and responsibility of ownership of specified existing roads.

7. The major works in respect of the scheme are described in the Bill as principal works (being works that are specifically described in **schedule 1**). The schedule describes each of the principal works in relation to:

- construction of the new crossing;
- construction of new roads (including connections with existing roads) and accesses; and
- improvement of existing roads.

8. To facilitate the implementation of the works the Bill also provides for the stopping up<sup>1</sup> of lengths of some roads and other rights of way where they cross or are on the route shown on the plans.

9. In addition, the Bill provides a power to the Scottish Ministers to construct miscellaneous works or do other things that are ancillary to or in consequence of the principal works. In the Bill, the works that enable these miscellaneous things to be done are called “ancillary works” (and may be of a type described in **schedule 2**). The principal and ancillary works are collectively described within the Bill as the “Forth Crossing works”.

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<sup>1</sup> “Stopping up” a road is a technical expression for closing a road and terminating public rights of way over it. A road may include a road, cycle track or path, all of which have the status of road.

10. All the other powers in the Bill are required in connection with or to facilitate the construction of the new bridge and the construction and improvement of roads. In particular, the Bill seeks to grant compulsory purchase powers over the land required for the scheme. This power ensures that the Scottish Ministers will be able to acquire the land or rights in land that are required for the works to be constructed and operated.

11. In the absence of seeking statutory compulsory purchase powers there could not be certainty of being able to acquire the necessary land. Even if the owners of all the relevant property interests were prepared to sell, without compulsory purchase powers there would be no way of preventing them from demanding prices in excess of a fair market value, effectively demanding a premium for the scheme. Without compulsory purchase powers there would therefore be no certainty that the scheme could be provided within a reasonable time and budget.

12. The Bill seeks also to grant planning permission for the scheme, however, the Bill restricts this permission so that it applies only where the works authorised by the Bill have started within 5 years of the Bill receiving Royal Assent.

#### **ACCOMPANYING DOCUMENTS**

13. The Bill must be read by reference to the documents referred to in it, namely the Parliamentary plans, the Parliamentary sections and the Book of Reference. The Parliamentary plans show the lands to be acquired or otherwise used, the works and facilities to be constructed and (in some cases) the uses to be made of certain areas. The Parliamentary sections show cross-sections and longitudinal sections of specific scheduled works.

14. The Book of Reference lists the owners, lessees and occupiers of all lands which may be compulsorily acquired or used or who have interests in any land or water in or over which rights would be acquired or extinguished, or interests in the rights that would be acquired or extinguished. The identification and process of notification of owners, lessees and occupiers is contained within a Heritable Interests Statement which accompanies the Explanatory Notes.

15. European legislation on environmental assessment (EC Directive 85/337/EEC as amended by EC Directive 97/11/EC) applies to the Bill. The requirements are transposed into domestic law for development projects authorised under planning legislation through the Environmental Impact Assessment (Scotland) Regulations 1999 (SSI 1999/1) as amended by the Environmental Impact Assessment (Scotland) Regulations 2002 (SSI 2002/324). The requirements of those Regulations are applied to the procedures for Scottish Hybrid Bills authorising works by virtue of Rule 9C.3.2(g)(iii) of the Standing Orders of the Scottish Parliament and the Presiding Officer's determinations as set out in Annexes D and Q to the Parliament's Guidance on Hybrid Bills.

16. The findings of the environmental assessment that has been carried out in relation to the Bill's proposals are set out in the Environmental Statement that has been lodged as one of the accompanying documents. The Environmental Statement sets out the beneficial and adverse environmental impacts arising from the construction and operation of the scheme and where appropriate sets out the mitigation measures designed to prevent, reduce and if possible offset

significant environmental impacts. A non-technical summary of the Environmental Statement has been produced for the benefit of the general reader

## **STRUCTURE OF THE BILL**

17. Before commenting on the individual sections it may be helpful to explain how the Bill operates. The Bill is divided into 10 Parts:

**Part 1** creates the statutory framework to allow the Scottish Ministers to construct the works, which describes the works and sets out how the works will be undertaken.

**Part 2** enables the Scottish Ministers to designate roads as trunk and special roads. Additionally, it allows the Scottish Ministers to transfer roads to and from the management of the local roads authority. It also provides powers to the Scottish Ministers to create or stop up roads and accesses.

**Part 3** provides powers to acquire permanently land or rights in land within defined limits and sets a limit of 5 years in order to commence the conveyance of land. This Part also provides the Scottish Ministers with power to acquire, in specified circumstances, land by agreement.

**Part 4** sets out the procedure including the notification arrangements that the Scottish Ministers have to apply when taking title to land.

**Part 5** creates powers to take temporary possession of land and sets out the purposes for which possession can be taken, the notification procedures, what can be done on the land, the duration of the possession and the obligations placed on the Scottish Ministers to return the use of the land to the owner. This Part also provides powers to enter but not take ownership of other land and the procedures that apply.

**Part 6** sets out the rights in respect of compensation and the procedures to apply where there is dispute.

**Part 7** sets out the rights and responsibilities of the providers of water, gas, electricity, sewerage and telecommunications services through apparatus that will or may be affected by works. It also provides a mechanism for the Scottish Ministers to compensate individuals for the costs incurred in connecting their premises to other apparatus.

**Part 8** deems planning permission for the works and provides for the relaxation of controls in respect of listed buildings so that work affecting those properties can proceed without requiring further separate authority.

**Part 9** sets out the duties of the Scottish Ministers to mitigate the impact of the scheme on the environment and to comply with code of construction practice and the noise and vibration policy statement. This Part also sets out procedures in respect of the control of noise and what matters may constitute a statutory nuisance.

**Part 10** includes general provisions concerning matters such as the definition of blight (as it relates to the Bill), the certification of plans, communication and noticing procedures, the application of the Bill to the Crown, interpretation of terms used within the Bill and the date on which provisions are to come into force.

18. The Bill incorporates or disapplies provisions of a number of Acts and these are referenced accordingly within these notes.

## COMMENTARY ON SECTIONS

### PART 1 – WORKS

19. This Part provides specific powers for the Scottish Ministers to construct the works (**section 1**), it also describes the works (**schedules 1 and 2** and **sections 2 and 3**), the location of the works (**section 4**) and how the works are to be carried out (**sections 5 to 10**).

#### **Section 1 – Power to construct Forth Crossing etc.**

20. **Section 1** gives the specific statutory authority which is required for the works. It gives Ministers powers to carry out the works. In the absence of this section the activities permitted by the Bill would potentially be liable to challenge in the courts e.g. on the grounds that the bridge and roads constituted a legal nuisance. Such an action could potentially result in an order preventing the nuisance by stopping the works (called an interdict). The protection of statutory authority is therefore important to the viability of the scheme.

21. Subsection (1)(a) makes clear that the Scottish Ministers can construct the bridge and construct new roads and structures or improve existing roads and structures associated with the bridge. These works are known collectively as the principal works and a full description of the principal works is set out in **schedule 1**. The subsection also introduces the term the Forth Crossing. That should not, however, be misconstrued as meaning that the bridge must be called the Forth Crossing.

22. Subsection (1)(b) gives effect to **schedule 2**, which describes the types of works which may be required in connection with the principal works. Ancillary works will only be authorised if they are necessary or expedient in connection with the construction of the principal works or as a consequence of the maintenance of those works. **Schedule 2** provides a description of the types of works and operations that are normally necessary for the construction and operation of bridges and also mitigation works and works for the protection of neighbouring land interests. It is possible that other types of ancillary works, not listed in **schedule 2**, may be necessary to give effect to the works and therefore subsection (1)(b)(ii) provides authority to the Scottish Ministers to undertake other ancillary works not listed within **schedule 2**.

23. Subsection (1)(b) recognises that once the bridge and associated roads are operational any maintenance will be authorised under the Roads (Scotland) Act 1984 (c.54) (as a result of their designation as trunk roads under Part 2) and ties the ancillary power to the Bill's authorisation for construction and its recognition that maintenance will be under the 1984 Act. The term Forth Crossing works, which is applied throughout the Bill, is defined in subsection (2).

#### **Section 2 – Bridge proportions**

24. This section sets out limitations on the construction of the proposed bridge to ensure its safe operation and the safe operation of shipping and aviation interests that will pass respectively below and above the bridge.

25. The Firth of Forth is a navigational water. To provide certainty to vessels passing under the new bridge, **section 2(a)** sets out the headroom for the bridge. The headroom is the minimum

height between the water level and the lowest point of the underside of the bridge or any attachments to the bridge. In the United Kingdom, heights above sea level are defined in terms of Ordnance Datum Newlyn, which is the mean sea level at Newlyn in Cornwall.

26. There are two navigational channels which pass under the area where the new bridge is proposed to be located. The three towers to support the bridge are not to be located in the navigational channels of the Forth. The navigation channel which passes between the proposed Central Tower of the bridge and the proposed North Tower is known as the Rosyth Navigational channel and the channel between the proposed Central Tower and the proposed South Tower is known as the Forth Deep Water Channel. The minimum distance between the towers as referenced in paragraphs (c) and (d) includes the whole of the relevant channel under that part of the bridge. The location of the proposed Central Tower will be, as stipulated within paragraph (b), on an islet known as Beamer Rock.

27. Paragraphs (e) and (f) provide a limit as to maximum height of the towers once constructed to ensure there is no interference with air traffic in the area.

### **Section 3 – Maximum construction height**

28. **Section 3** requires the Scottish Ministers to obtain the consent of the operator of Edinburgh Airport when carrying out or maintaining the works on the bridge above a prescribed height. That prescribed height is known as the maximum construction height and is defined for each of the towers within paragraphs (a) and (b). No consent is required when undertaking operations below the maximum construction height.

### **Section 4 – Limits of deviation etc.**

29. **Section 4** allows for a degree of flexibility within defined limits. The Parliamentary plans show the centre line of the principal works (see **schedule 1**) and the limits of deviation around those centre lines. Subsection (1)(a) allows lateral deviation of the works from the centre line provided that the principal works remain within the limits of deviation as shown on the plans. The Bill will not permit the construction of the principal works outwith the limits of deviation.

30. The Parliamentary sections show the vertical dimensions and situations of the proposed principal works. Subsection (1)(b) allows the Scottish Ministers to vary the vertical location of the principal works. The ability to deviate upwards is constrained by the provisions within **sections 2 and 3**. The ability to deviate to any extent downwards enables the Scottish Ministers to construct the principal works at whatever depth is required to achieve stability.

31. Subsection (2) enables the Scottish Ministers to carry out and maintain ancillary works (see **section 1(1)(b)**) only within Act limits which are defined at **section 78**.

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

32. This section places an obligation on the Scottish Ministers to consult with the operator of Edinburgh Airport on the placing of markings and obstacle lighting on the bridge prior to construction, following construction and at any other time as the Scottish Ministers think fit,

which may include periods of maintenance activity. Subsection (1) sets out the obligation and subsection (2) describes the matters on which the Scottish Ministers must consider representations.

## **Section 6 – Interference with navigation**

33. **Section 6** provides a power to allow interference with navigation within the Firth of Forth during the construction and maintenance of the works. That power is limited by subsection (1) so it can only be exercised within the limits of deviation shown on the Parliamentary plans. Therefore, the power to interfere with navigation cannot be exercised in relation to any part of the Firth of Forth which is outwith the limits of deviation. Subsections (1)(a) and (b) provide the specific circumstances in which the Scottish Ministers are permitted to interfere with navigation. The application of such a power is usual in works of this kind.<sup>2</sup>

34. Subsection (2) provides an illustrative list of things that the Scottish Ministers may do that will interfere with navigation. Before interfering with any navigational rights the Scottish Ministers must under subsection (3) consult with the navigation authority<sup>3</sup> and ensure that any interference or obstruction or delay caused as a consequence of that interference is kept to a minimum. Subsection (4) advises that the Scottish Ministers are not liable for any loss arising as a consequence of their interference with navigation.

## **Section 7 – Dredging etc.**

35. Dredging in the Firth of Forth may be required to be carried out as part of the Forth Crossing works to enable the pillars and towers of the bridge to be located. Blasting of Beamer Rock may also be required to provide a platform for the Central Tower.

36. **Section 7** provides the Scottish Ministers with the power to undertake activities such as dredging and blasting which affect the bed of the Firth of Forth. Subsection (1) provides that the Scottish Ministers may carry out such activities within the limits of deviation. Similar powers have been applied in previous Acts authorising such works.<sup>4</sup>

37. Subsection (2) permits the Scottish Ministers to use or otherwise dispose of anything removed as a result of dredging or blasting. Activities such as dredging, blasting or other activities associated with the carrying out of the works in the Firth of Forth are likely to result in an obstruction or danger to navigation.

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

38. The Marine (Scotland) Bill is in progress in the Scottish Parliament and seeks to establish a consent regime for such works as described in **section 7**. It is not appropriate for the Forth Crossing works once authorised by the Parliament under the Bill to be subject to a further consent regime. Accordingly, **section 8** enables the Scottish Ministers to undertake the Forth

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<sup>2</sup> See, for example, section 29 (works affecting river Severn) of the Severn Bridges Act 1992 (c.3).

<sup>3</sup> Currently Forth Ports plc.

<sup>4</sup> See, for example, section 30 (dredging etc.) of the Severn Bridges Act 1992 (c.3).

Crossing works without having to obtain a license for any activity that may be required under the Marine (Scotland) Bill (once enacted).

### **Section 9 – Interference with railways**

39. This section places the Scottish Ministers under a duty to consult with relevant railway undertakers and consider any representations that they might have. The purpose of the section is to ensure that the relevant railway undertaker is fully aware of the nature of the ancillary works, which unlike principal works (which are set out in **schedule 1** and illustrated on the Parliamentary plans) are only defined in general terms (see **section 1** and **schedule 2**).

### **Section 10 – Trees and shrubs**

40. The powers under **section 1** of the Bill include the power to clear ground in respect of vegetation and that power also applies under **section 41**. **Section 10** further enables the Scottish Ministers to cut down, lop or cut back the roots of any tree or shrub on land that is not within the Act limits or subject to the power in **section 41**. The power being taken in this section can only be exercised if the Scottish Ministers reasonably believe it to be necessary to prevent the tree or shrub from obstructing or interfering with the works or apparatus used in connection with the works or from constituting a danger to persons carrying out or using the works.

41. Subsection (2) requires that the Scottish Ministers make reasonable efforts to avoid unnecessary damage to the tree or shrub.

42. Subsection (3) disapplies any tree preservation order made under section 160(1) of the Town and Country Planning (Scotland) Act 1997 (c.8) or any prohibition on interfering with trees in conservation areas made under section 172 of the same Act which might otherwise apply.

43. The approach taken is to ensure that as far as possible consents are authorised or disapplied under the Bill in order that the Forth Crossing works are not compromised in their delivery. Compensation for cutting down, lopping or cutting back roots of trees and shrubs is covered in **section 52**. Any dispute over compensation is to be determined by the Lands Tribunal of Scotland.

## **PART 2 – ROADS**

44. This Part enables the Scottish Ministers to designate special and trunk roads (**section 11** and **section 12**) and to transfer roads to the management of the local roads authority (**section 13**). It also provides powers to stop up roads (**section 14**) and accesses (**section 15**), extinguish rights of way over a stopped up road or access (**section 16**) as well as setting out a process for determining the ownership of the solum of a stopped up road (**section 17**). This Part, additionally, sets out that the Scottish Ministers must provide information to the Scottish Road Works Register when carrying out works (**section 18**), disapplies the need for consent from the local roads authority in certain circumstances (**section 19**) and references technical provisions (**section 20**) in the Roads (Scotland) Act 1984 (c.54) that are required to be disapplied to enable the appropriate operation of the Bill.



## **Section 11 – Special roads**

45. The term “special road” is used to describe a road which is prescribed for the use of certain classes of traffic<sup>5</sup>. Subsection (1) introduces **schedule 3** which lists those roads or parts of road that the Scottish Ministers may designate as being a special road. Subsection (2) provides the notification procedures that the Scottish Ministers must follow when designating a road under the Bill as a special road.

46. Subsections (3) and (4) are technical provisions to ensure that a designation of special road status made under the Bill can be treated as though it were made under section 7 of the Roads (Scotland) Act 1984 and therefore attract the provisions of the 1984 Act as they relate to special roads. If a special road designation were to change, section 145 of the 1984 Act would need to be applied to modify or repeal **section 11**. This ensures that any future re-designation of roads as special roads or otherwise can be done using the powers under section 7 of the 1984 Act, and is subject to the relevant procedures in Schedules 1 and 2 to that Act.

## **Section 12 – Trunk roads**

47. **Section 12** provides for the designation of new roads and existing roads as trunk roads. The expression trunk road applies to roads within the trunk road network<sup>6</sup> for which the Scottish Ministers are responsible. **Section 12(1)** introduces **schedule 4** which provides details of all new roads which are to be trunk roads on the date that the section comes into force. The subsection also ensures that a proposed road identified in **schedule 3** also becomes a trunk road when the section is commenced.

48. Subsection (2) introduces **schedule 5** which lists existing roads (or parts of roads) currently maintained by local roads authorities. These roads will become trunk roads on a date determined by the Scottish Ministers and accordingly transfer to the Scottish Ministers.

49. Subsection (3) makes provision for a special road to become a trunk road on the date that the road is designated as being a special road if it is not already a trunk road under the Bill or the Roads (Scotland) Act 1984. This subsection therefore ensures that any road designated as a special road will also be a trunk road.

50. The mechanism for notifying various parties when an existing road is to become a trunk road is set out in subsection (4).

51. Subsection (5) applies section 112 of the 1984 Act which provides that when a road transfers from a local roads authority to the Scottish Ministers all liabilities associated with the road (except for any loans or loan charges) will transfer at the time the road becomes a trunk road.

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<sup>5</sup> A common type of special road is a motorway which is prescribed for traffic which falls within Classes I and II of schedule 3 to the Roads (Scotland) Act 1984 (c.54).

<sup>6</sup> The Trunk Road Network is a system of strategic routes of national importance that caters for the through movement of long distance traffic. The network includes motorways (“M”) and all-purpose (“A”) roads.

52. Subsection (6) enables a designation of a road as a trunk road made under the Bill to be changed in the future under section 5 of the 1984 Act (which includes detrunking of roads).

53. Subsection (7) ensures a trunk road designated under the Bill is included in the definition of a trunk road in the 1984 Act and therefore attracts the maintenance and other provisions of the 1984 Act as they relate to trunk roads.

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

54. The Scottish Ministers will need to create or improve a number of roads as part of the Forth Crossing works. Once created or improved the responsibility for some of these roads will transfer to the relevant local roads authority. Subsection (1) introduces **schedule 6**, which lists in column (3) the works associated with each road and in column (4) the relevant local roads authority.

55. Subsection (2) advises of the date of transfer of roads from the Scottish Ministers to the local roads authority. It is usual on any roads scheme undertaken by the Scottish Ministers under the Roads (Scotland) Act 1984 for any transfer of road responsibilities to occur on the 1 April following the date on which such a road is opened to traffic. The Bill, for reasons of consistency, follows that approach.

56. Subsection (3) ensures that on transfer of the road to the local roads authority all matters in connection with the road are similarly transferred.

### **Section 14 – Stopping up of roads**

57. Subsection (1) authorises the permanent stopping up<sup>7</sup> of each road as identified in **schedule 7** for the purposes of the Forth Crossing works. Without a power to stop up, existing roads would interfere with the construction and operation of the proposed scheme and provide public rights of way at inappropriate locations.

58. **Part 1 of schedule 7** provides a list of those roads to be stopped up where the Scottish Ministers have determined that they are satisfied that another reasonably convenient road exists or that no alternative road is necessary. Subsection (2) introduces **Part 2 of schedule 7** which lists those roads that are to be stopped up but which may not be stopped up until a substitute road is open for public use or an alternative is provided.

59. Where a road is closed subsection (3) allows the Scottish Ministers to use the site for the Forth Crossing works. **Section 53** provides for the payment of compensation in respect of stopping up. Subsection (4) sets out that a road can not be permanently stopped up before the Scottish Ministers have notified the public of the closure date. Subsection (5) provides for the notification procedure for the opening of a new road as described in **Part 2 of schedule 7**.

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<sup>7</sup> “Stopping up” is a technical term for closing a road to traffic and terminating public rights of way over it. A road may include a road, cycle track or path all of which have the status of road.

## **Section 15 – Stopping up of means of access**

60. Subsection (1) authorises the permanent stopping up of each access as identified in **schedule 8** for the purposes of the Forth Crossing works. Without a power to stop up, existing accesses could interfere with the construction and operation of the proposed scheme and provide public rights of way at inappropriate locations.

61. **Part 1 of schedule 8** provides a list of those accesses to be stopped up where the Scottish Ministers have determined that they are satisfied that another reasonably convenient access exists or that no alternative access is necessary. Subsection (2) introduces **Part 2 of schedule 8** which lists those accesses that are to be stopped up but which may not be stopped up until a substitute access is open for use or an alternative is provided. Subsection (3) sets out that an access can not be permanently stopped up before the Scottish Ministers have notified the closure date to the owner and occupier of any land affected by the stopping up.

62. Subsection (4) sets out the notification procedure for the opening of the access as described in **Part 2 of schedule 8**.

63. If an owner disputes that the access is complete then under subsection (5) an objection can be made to the Scottish Ministers. That objection must be made within 28 days of receiving a completion notice from the Scottish Ministers. On receipt of the objection notice the Scottish Ministers have two options under subsection (6): they can withdraw the notice and carry out further works and then re-issue the completion notice; or they can, if they believe, for instance, that the access is ready for use, notify the owner that they are referring the matter to the Lands Tribunal for a determination. The latter option ensures that there is resolution of any dispute.

64. Subsection (7) places the Scottish Ministers under a duty to carry out reasonable maintenance of the substitute access for a specified period.

65. In order to provide a substitute access for an owner of land the Scottish Ministers may require access to land in order to create the access. There is no requirement to take that land permanently since the intention is to ensure that the access, once constructed, reverts to the ownership of the person or persons for whom the access was created. Therefore **section 37** provides within subsection (1) a power to enter and take land temporarily and under subsection (2) ensures that the land can be taken for a specified period.

## **Section 16 – Extinction of rights of way**

66. This section provides that, in stopping up a road or an access under **section 14 or 15**, all rights of way are extinguished. Any person who suffers loss or disturbance by extinguishment of any private right of way under **section 14 or 15** shall be entitled to compensation under **section 53** of the Bill.

## **Section 17 – Solum of stopped up road**

67. The solum of a road means the soil or ground beneath the road upon which the road is built. A road vests in the appropriate roads authority but the roads authority does not necessarily

own the solum of the road. Often the roads authority will have a right to use, or authorise the use of the road by the public, or maintain the road without having ownership of the solum itself.

68. This section provides that where a road ceases to be used as a road, the solum of the road will vest in the owner of the land which adjoins the former road unless there is a person, who by reason of title, has a prior claim or the Scottish Ministers will become the adjoining land owner under the terms of subsection (1)(b). This section is consistent with the provisions that apply in relation to the vesting of solum of a stopped up road under the Roads (Scotland) Act 1984<sup>8</sup>.

69. Subsection (2) provides that the resolution of any dispute as to the vesting of the solum will be heard before a sheriff in whose sheriffdom the land is located.

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

70. The Scottish Road Works Register is the national database system for the electronic transfer, retention and management of road works data and is the central tool for road works authorities and statutory undertakers (utility companies) to enter information to assist them in the planning and coordination of works on Scottish roads. Under **section 18** the Scottish Ministers must enter relevant information in the register in a manner which is in accordance with provisions of the New Roads and Street Works Act 1991 (c.22) which apply when they propose to carry out works on roads for which they are not the roads authority. Such action will ensure that statutory undertakers and the relevant local roads authority are appropriately informed of the timing and nature of works that are due to take place.

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

71. It will be necessary for the Scottish Ministers to provide or improve access from existing public roads to land to be used for the Forth Crossing works or to land on which there is a requirement under **section 38** to construct or improve a new means of access. **Section 38** enables the Scottish Ministers to facilitate such access by the dropping of kerbs and similar works. The locations of these works are shown on the Parliamentary plans. **Section 19** allows the Scottish Ministers to carry out such works without having to seek consent from the local roads authority.

### **Section 20 – Application of the Roads (Scotland) Act 1984**

72. This section contains technical provisions which disapply specific provisions of the Roads (Scotland) Act 1984, which would otherwise apply to “roads”, in order to enable the appropriate operation of the Bill. Subsection (1) is disappplied because specific provision has been made in **section 12** to ensure that a special road may be a trunk road. As the Bill is providing the authority under **section 1** (for the Forth Crossing works, which include the construction of new roads), subsection (2) disapplies Part 3 of the 1984 Act and under subsection (3) certain other provisions of that Act. The manner in which the works are to be carried out under the Bill are covered by provisions in a number of sections (see for example **sections 2 to 10**) as well as procedures contained within accompanying documents (see the Code of Construction Practice, contained within the Environmental Statement). Sections 103 to 111

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<sup>8</sup> See section 115 of the Roads (Scotland) Act 1984 (c.54).

(acquisition of land) of the 1984 Act are disapplied by subsection (4) as **Part 3** of the Bill makes specific provision for matters relating to which land may be acquired.

### **PART 3 – LAND**

73. This Part is concerned with the acquisition of land. The sections set out provisions from earlier Acts that will be incorporated or disapplied (**section 21**) within the Bill as well as the powers to acquire land compulsorily (**section 22**) or by agreement (**section 23**). The sections also cover matters relating to servitudes and other rights (**sections 24 to 27**) and mineral rights (**section 28**). This Part also contains a time limit within which the Scottish Ministers must exercise their powers of compulsory purchase (**section 29**).

#### **Section 21 – Incorporation of enactments**

74. Compulsory purchase under the Bill must be on the same standardised basis as any other compulsory purchase in Scotland. This means that in the Bill compulsory purchase must be subject to all the same procedural rules, safeguards and requirements regarding compensation as apply generally. However, the legislation covering compulsory purchase is both large and complex and is contained in a number of Public Acts some of which were authorised in the 1840s. Two options presented themselves on how to incorporate the provisions of these Acts within the Bill, the first being to write out the relevant provisions from each of the Acts at length in the Bill and the second to apply the existing Acts as if they had been included within the Bill. The Bill proposes the latter and in that respect the Bill follows precedent set both in legislation authorising infrastructure works throughout Great Britain since the mid 19<sup>th</sup> century and in recent Private Acts for infrastructure purposes authorised by the Scottish Parliament.

75. The Bill accordingly within **section 21** incorporates provisions of the Lands Clauses Consolidation (Scotland) Act 1845 (c.19) (in the remainder of these Notes, “the 1845 Lands Act”), the Lands Clauses Consolidation Acts Amendment Act 1860 (c.106) and Acts for the time being in force amending those Acts<sup>9</sup> and the Railway Clauses Consolidation (Scotland) Act 1845 (c.33) (in the remainder of these Notes, “the 1845 Railways Act”).

76. Subsection (1) specifies which sections of the 1845 Lands Act are excluded from incorporation. Subsection (2) provides for the incorporation of section 6 (which addresses compensation) and sections 71 to 78 (which cover mines) of the 1845 Railways Act<sup>10</sup>.

77. Subsection (3) provides that the incorporated sections of these Acts apply for the purposes of the Bill except where the Bill makes inconsistent provision or expressly varies the incorporated provision. Subsections (4) and (5) ensure that the provisions of the 1845 Lands Act and the 1845 Railways Act can be appropriately incorporated within the Bill by specifying how certain terms used in those Acts are to be interpreted in applying the provisions for the purposes of the Bill.

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<sup>9</sup> These are the Acts collectively known as “the Lands Clauses Acts” and incorporated by section 21(1).

<sup>10</sup> See notes on section 28 (minerals) of the Bill.

## **Section 22 – Compulsory acquisition of land**

78. **Section 22** provides the power for the Scottish Ministers to compulsorily acquire land. Under paragraph (a) the land that may be acquired must be within the limits of deviation and it must be land that is required for the purposes of the Forth Crossing works. The limits of deviation are shown on the plans and the land is described in the Book of Reference accompanying the introduction of the Bill.

79. Paragraph (b) provides that the land<sup>11</sup> specified in **schedule 9** may be acquired compulsorily provided that it is required for the purposes of the Forth Crossing works. **Schedule 9** is in two Parts: Part 1 describes land that is to be acquired compulsorily and Part 2 describes land over which only rights can be taken.

80. The power conferred by **section 22** is subject to the time limit in **section 29**.

## **Section 23 – Acquisition of land by agreement**

81. This section enables the Scottish Ministers to acquire by agreement land which is within the limits of deviation or within **schedule 9** (see **section 22**). Ministers can also by agreement acquire land outwith the land detailed in **section 22** if it is to be used to mitigate adverse effects arising from the carrying out or operation of the Forth Crossing works or where the enjoyment of the land will be seriously affected by the carrying out or operation of such works.

82. **Section 23(2)** makes a necessary consequential amendment to the Land Compensation (Scotland) Act 1973 (c.56) to take works authorised by the Bill out of the definition of “public works” contained in the relevant sections of that Act.

## **Section 24 – Acquisition of servitudes and other rights**

83. **Section 24** explains that the Scottish Ministers may acquire servitudes or other rights, such as real burdens, in land which is within the limits of deviation (which may have been acquired compulsorily under **section 22** or by agreement under **section 23**) or is land specified in **schedule 9**.

84. Subsection (1) explains that the Scottish Ministers may acquire existing servitudes or other rights or create new rights. The creation of new servitudes or rights is needed to allow access for construction and then maintenance of the road.

85. Subsection (2) ensures that when the Scottish Ministers are exercising their power to acquire a servitude or right they are not obliged to acquire the whole land where all that is required is some right over the land. In the absence of this provision the Scottish Ministers would be required to buy land outright even though all that is required for the carrying out or maintenance of the works is a right of access.

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<sup>11</sup> For the purposes of the Bill the term “land” includes buildings, land covered by water, and any interest in land (an interest being any servitude or other right in land).

## **Section 25 – Extinction of real burdens and servitudes etc.**

86. The purpose of **section 25** is to ensure that there are no servitudes or burdens on the land acquired by the Scottish Ministers that could conflict with the ability to carry out or to maintain the works. Accordingly, paragraph (a) provides for the automatic extinguishment of any servitude<sup>12</sup> or real burden<sup>13</sup> over land that is within the limits of deviation or is specified in **schedule 9**. Paragraph (b) similarly provides for the automatic disapplication of any development management scheme<sup>14</sup> on the land acquired compulsorily. Any existing servitudes or real burdens or the application of the development management scheme will cease to apply to that land once the registration of the conveyance occurs.

## **Section 26 – Persons under a disability may grant servitudes, etc.**

87. Section 7 of the 1845 Lands Act permits certain persons (described as being under a disability as they are legally disabled from doing something) to convey existing rights in land and to dispose of land. However, those persons are legally disabled from being able to do other things such as creating a new right in their land. Provision is accordingly required to ensure that it will always be possible for the Scottish Ministers to acquire new rights under **section 22** or **section 23** from persons such as trustees.

88. **Section 26** allows persons under a legal disability to grant to the Scottish Ministers a servitude or right over their land. If they remained unable to do this people in this position could only sell the whole of the land and the Scottish Ministers could be left with land they did not need for the purposes of the Bill.

89. There is a caveat, which is that rights in relation to water cannot be granted if others have an interest in that water. Where several landowners have interests in the same water, the law treats them as sharing a common interest: one of them cannot therefore do something that affects the interest of others. The provision within **section 26** addresses this matter.

## **Section 27 – Registration of servitudes and other rights**

90. **Section 27** addresses an issue in relation to the construction of Scottish property law whereby a servitude is to be construed restrictively. As the works authorised by the Bill are principally about the creation of a bridge and connecting roads, the benefit of a positive servitude (such as a right of access to maintain the bridge or roads) may be capable of benefiting considerably more than the land immediately adjoining the burdened property.

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<sup>12</sup> A servitude is a right to make some limited use of another's property. Cusine and Paisley (*Servitudes*, published by W. Green, 1998, ISBN 9780414010888) define servitudes as "a class of legally enforceable and real rights of varying content, held by one person in his capacity as owner of one piece of ground (the dominant tenement) over another piece of ground (the servient tenement) in the vicinity, but in separate ownership by which some benefit is conferred on the dominant tenement."

<sup>13</sup> A real burden is an encumbrance on land constituted in favour of the owner of other land in that person's capacity as owner of that other land (section 1 of the Title Conditions (Scotland) Act 2003 (asp 9)). A real burden, as defined in section 1 of the 2003 Act, includes a personal real burden.

<sup>14</sup> A development management scheme is defined by section 71 of the 2003 Act as schemes or rules for the management of land as is set out in an order made, either, in consequence of that section; under section 104 of the Scotland Act 1998 (c.46) (which provides a power to make provision consequential on legislation of, or scrutinised by, the Scottish Parliament); or in relation to a particular development, that scheme as applied to the development.

91. Without the provision contained in **section 27**, if the deed creating a servitude does not define exactly the land being benefited by the servitude, then the servitude cannot be used to benefit that land. In the context of the Bill, a servitude of access that defines the benefited property as being only some of the land comprised within the scheme could not be used to access land somewhere else within the scheme. Section 27(1)(a) ensures that servitudes acquired under the Bill for the benefit of the scheme are not reduced in scope by the application of general Scots property law.

92. Subsection (1)(b) however does align with general Scots property law in that where it can be clearly shown what is the benefited property then that will be detailed in the instrument creating the servitude.

93. Subsection (2) provides that a servitude under subsection (1) is effective whether or not the deed creating it is registered against the benefited property. Section 75(1) of the Title Conditions (Scotland) Act 2003 (asp 9) requires that a positive servitude must be registered against both the burdened and benefited property. This subsection ensures that servitudes acquired under the Bill will be effective in terms of section 75 even if the servitude is only registered against the burdened property.

## **Section 28 – Minerals**

94. **Section 28** prevents the Scottish Ministers from acquiring the mineral rights to any land that they may acquire compulsorily under **section 22** unless the rights concern mines or minerals that affect the carrying out of the Forth Crossing Works or have been expressly included within any conveyance transferring the land.

95. This section is required as **section 21(2)** of the Bill does not incorporate section 70 of the 1845 Railways Act which provides for the exclusion of minerals from land purchased.

96. **Section 21(2)** does however incorporate sections 71 to 78 (as originally enacted)<sup>15</sup> of the 1845 Railways Act. These sections place restrictions on a person with rights to work the minerals beneath the land that has been acquired and also on working minerals within 40 yards of the land. The person seeking to work those minerals would have to give the authority thirty days notice. If the authority, which for the purposes of the Bill is the Scottish Ministers, is of the view that the working of the mines (or part of them) will damage their works and the Scottish Ministers are willing to make compensation for the minerals (or any part left unworked), the Scottish Ministers can issue a counter notice to the person with rights to work the minerals advising that person of the intention of the Scottish Ministers to pay compensation. If minerals are worked in contravention of that counter-notice, the person must make good any damage caused at their own expense; the Scottish Ministers can also make good any damage and recover any costs from the party who carried out the works.

97. If these sections are not incorporated it would mean that the Scottish Ministers would not have the benefit of what is effectively a 40 yard exclusion zone of mineral working around the

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<sup>15</sup> Sections 71 to 78 of the 1845 Railways Act were modified by the Mines (Working Facilities and Support) Act 1923 (c.20). The amended version is applied to railways whereas the original version is employed for other compulsory purchases.



Forth Crossing works. The lack of a right to determine an exclusion zone could have potential consequences for the Forth Crossing works, for instance, in ensuring the stability of the ground.

98. These provisions are generally applied in respect of compulsory purchases: the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) provides that a compulsory purchase order may make provision for the incorporation of sections 71 to 78 of the 1845 Railways Act as originally enacted. The Roads (Scotland) Act 1984 (c.54), which is the principal Act for the construction of roads, also includes at section 110(5) of that Act provisions for the incorporation of sections 71 to 78 as originally enacted of the 1845 Railways Act.

### **Section 29 – Time limit for compulsory acquisition**

99. **Section 29** provides that the compulsory purchase powers of the Bill will expire 5 years from the date on which the Bill receives Royal Assent. This is with the exception that if either a notice to treat (see **section 30**) has been served or if the Scottish Ministers have made a general vesting declaration (see **section 35**) within the 5 year period then for those notices/declarations, the time limit does not apply.

100. Setting a time limit in the Bill within which the compulsory purchase powers can be exercised ensures that landowners are not prejudiced. Otherwise landowners would find that for so long as their land was at risk of compulsory purchase it would be difficult to sell their land, or its value would be reduced. **Section 72** (blighted land) provides for the situation where a landowner needs to sell land that is affected in this way.

101. It is normal practice for legislation authorising the construction of works to impose a time limit on the exercise of compulsory purchase powers.

### **PART 4 – TAKING TITLE TO LAND**

102. This Part deals with the procedures associated with the acquisition of title to land. There are two standard procedures commonly known as “notice to treat” and “general vesting declaration” and provisions for each procedure (see respectively **sections 30 to 34** and **sections 35 and 36**) are contained within the Bill

103. The **notice to treat** procedure involves the serving of a special notice by the person authorised to purchase the land to the landowner offering to correspond with the landowner with a view to agreeing compensation. The special notice is known as a “notice to treat”. The person authorised to acquire the land, in this case the Scottish Ministers, may enter the land before the compensation is agreed and the land has been formally transferred by serving a “notice of entry” on the owner. If the owner is unwilling to sell the land or cannot be traced then the Scottish Ministers can acquire the land by executing a deed, called a “notarial instrument”. This provision is to ensure that the landowner cannot hold up the scheme unreasonably by refusing to sell and that the scheme can go ahead even if the landowner cannot be traced. The level of compensation will be the same whether acquisition is conducted by means of a “notarial instrument” or with the agreement of the owner.

104. The process for assessing compensation is contained within the 1845 Lands Act and the Land Compensation (Scotland) Act 1963 (c.51). If a dispute should arise about the amount of compensation it is referred to the Lands Tribunal for Scotland which is a specialist tribunal for dealing with such disputes.

105. The procedure known as **general vesting declaration** is discussed at the explanation of **section 35**.

### **Section 30 – Service of a notice to treat**

106. **Section 30** sets the procedure that is to apply for the serving of a notice (called a notice to treat) on each landowner whose land is required. The procedure is set out in section 17 of the 1845 Lands Act which has been incorporated within the Bill under section 21(1).

107. Under subsection (2) the notice to treat must be served in the manner prescribed under **section 75** (Formal communications), provide a description of the land and ensure that any person receiving or reading the notice will know that it is an important document.

### **Section 31 – Partial acquisitions using notice to treat procedure**

108. The Bill disapplies, by virtue of section 21(1), section 90 of the 1845 Lands Act, which sets out the procedures where an acquiring authority wishes to acquire part only of certain types of property required for the works. Section 90 of the 1845 Lands Act provides that the owner of a house, building or factory cannot be compelled to sell only part of his or her property if he or she is willing to sell the whole. This would enable a landowner to insist on the acquisition of the whole of his or her property, however large, even where the part proposed for compulsory acquisition is only a very small fraction of the whole.

109. **Section 31** together with **section 32** replaces section 90 of the 1845 Lands Act so as to enable the Scottish Ministers to acquire only part of a property where this can be done without material detriment to the rest of the property and in the case of a park or garden without also seriously affecting the amenity or convenience of the house. Provision made by **sections 31 and 32**, in place of section 90 of the 1845 Lands Act, is common in private Scottish Acts<sup>16</sup>.

110. Subsection (1) provides that where a notice to treat is served under **section 30** the person on whom the notice is served may serve an objection within 28 days, objecting to the sale of part of the land. If no objection is made within 28 days the landowner is obliged to sell the land detailed in the notice to treat.

111. Subsection (2) sets out that an objection must be served on the Scottish Ministers and that it must contain a statement that the owner is willing to sell the whole of the land and identify that land.

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<sup>16</sup> See, for example, section 26 (acquisition of part of certain properties) of the Edinburgh Airport Rail Link Act 2007 (asp 16).

112. Subsection (3) sets out the procedure that the Scottish Ministers must follow when dealing with an objection. Subsection (3)(a) provides that where the Scottish Ministers agree to take the land which is the subject of the objection, the notice to treat is deemed to apply to the land in the objection as well as in the original notice to treat. Subsection (3)(b) enables the Scottish Ministers on receipt of the objection to withdraw the notice to treat and accordingly notify the objector. The reasons for withdrawing the notice may be varied and could include, for instance, the Scottish Ministers withdrawing the notice to treat so that another notice to treat can be issued in different terms, for instance, with lesser land being taken as a result of informal agreement of both parties. Subsection (3)(c) provides that where the Scottish Ministers do not agree to take the whole land as specified within the objection the Scottish Ministers must refer the question as to what land the owner shall be required to sell to the Lands Tribunal for Scotland and accordingly notify the objector. The Lands Tribunal must consider the referral in the terms as set out in **section 32**.

113. If within 3 months of receipt of an objection the Scottish Ministers fail to agree, withdraw or refer that objection the notice to treat will be deemed as withdrawn, under subsection (4).

### **Section 32 – Severance disputes (notice to treat procedure): Lands Tribunal**

114. **Section 32** sets out the matters that the Lands Tribunal for Scotland must consider and the outcome of the objection as a consequence of their determination.

115. Subsection (1) provides that on receipt of a referral from the Scottish Ministers the Tribunal must consider whether some or all of the land within the notice to treat can be acquired without material detriment to the rest of the property and in the case of a park or garden without also seriously affecting the amenity or convenience of the house.

116. Subsection (2) provides that if the Tribunal determines that the land in the notice to treat can be taken without material detriment and in the case of a park or garden without also seriously affecting the amenity or convenience of the house then the owner is obliged to sell the land that the Scottish Ministers wish to acquire.

117. Subsection (3) provides that the Tribunal may determine that (a) only some of the land within the notice to treat can be acquired or (b) that some or all of the land within the notice to treat can be acquired together with some or all of the additional land identified in the objection. Under this subsection a notice to treat can be deemed to include other land whether or not that land is subject to compulsory purchase under the Bill.

118. Under subsection (4) the Scottish Ministers have 6 weeks within which to withdraw the notice to treat and notify the owner rather than proceed with the acquisition of land as determined by the Lands Tribunal. The six week period is necessary to enable the Scottish Ministers to assess any consequential implications for the design and operation of the scheme as a result of the Lands Tribunal's determination.

119. Matters of compensation in respect of land are addressed under **Part 6**.

### **Section 33 – Severance of agricultural land**

120. The scheme impacts on agricultural land, particularly south of the Forth. **Section 33** ensures that **sections 31** and **32** do not apply in relation to agricultural land<sup>17</sup>, which is covered by specific provisions within sections 49 (notice to treat in respect of part of agricultural land) and section 50 (effect of counter-notice under section 49) of the Land Compensation (Scotland) Act 1973 (c.56).

### **Section 34 – Notice to treat: time limit**

121. Section 17 of the 1845 Lands Act requires an acquiring authority to give notice of its intention to take land by way of service of a notice to treat. That section is incorporated with the Bill by virtue of **section 21**. In relation to compulsory purchase *orders*, section 78 of the Planning and Compensation Act 1991 (c.34) limits the life of a notice to treat served under section 17 to three years from the date on which it is served. Section 78 only applies for the purposes of any compulsory purchase *orders* and a corresponding 3 year time limit is therefore applied in the Bill by **section 34**.

122. Subsection (1) provides that the time limit shall be three years unless any of the reasons listed in paragraphs (a) to (c) apply.

123. Subsection (2) allows the three year time limit period to be extended for any period of time provided that the Scottish Ministers and the owner of the land both agree to that extension.

124. Subsection (3) ensures that the Scottish Ministers must inform the relevant person when a notice to treat becomes invalid because it has not been served either within 3 years or within such period as agreed.

### **Section 35 – General vesting declarations**

125. **Section 35** attracts the “general vesting declaration” procedure to the Bill. This is a compulsory acquisition procedure which is an alternative to serving notice to treat and notices of entry on every owner. The procedure is set out in Schedule 15 to the Town and Country Planning (Scotland) Act 1997 (c.8) and provides a more convenient way to acquire a large number of parcels of land in different ownership.

126. The procedure involves sending a compulsory purchase notice of the intention to execute a “vesting declaration”. That notice is served on various specified parties who own or have an interest in the land which is to be subject to compulsory purchase. Those persons have two months in which to respond to the notice. On the expiry of that period of two months, or such longer period as may be specified in the notice, the acquiring authority, which for the purposes of the Bill will be the Scottish Ministers, can execute a declaration in the prescribed form (the prescribed forms are set out in the schedules to the Compulsory Purchase of Land (Scotland)

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<sup>17</sup> Agricultural land is defined in section 80(1) (general interpretation) of the Land Compensation (Scotland) Act 1973 (c.56).

Regulations 2003 (S.S.I 2003/446)) vesting the land in the Scottish Ministers from such period as may be specified in the declaration.

127. Once the declaration has been made it does not take effect until at least 28 days notice of its making has been served on every owner or occupier. At that point the declaration is treated as if it had been a notice to treat and the Scottish Ministers, as the acquiring authority, have the power to enter and take possession of the land without serving notices of entry.

128. To enable the general vesting declaration procedure to apply within the Bill specific provision is required and this is given by subsection (1) which provides the power for the Scottish Ministers to make a general vesting declaration for land that they wish to acquire compulsorily. That land, under **section 22**, is land within the limits of deviation and land identified in **schedule 9**.

129. Subsection (2) clarifies how the general vesting procedure of the Town and Country Planning (Scotland) Act 1997 should be applied for the purposes of the Bill.

### **Section 36 – Duty to publicise general vesting declarations**

130. **Section 36** sets out the procedure for publicising the making of a general vesting declaration and notifying those persons whose land or interest in land is affected by the declaration.

131. Subsection (1)(a) places a duty on the Scottish Ministers to publish a compulsory purchase notice in at least one local newspaper circulating in the area where land or an interest in land is to be acquired. The content of the compulsory purchase notice is described in subsection (2).

132. Subsection (1)(b) provides that a compulsory purchase notice, together with a copy of the Bill once enacted and a copy of the Parliamentary plans, which will show the geographic impact of the scheme, must be issued to those persons specified. Explanations of a real burden and a development management scheme are provided in the explanation to **section 25**.

## **PART 5 – POWERS TO ENTER AND USE LAND**

133. This Part creates powers to take temporary possession of land (**section 37**), sets out other purposes for which land may be entered (**section 38**), when possession can occur (**section 39**), the notification procedures (**section 40**), what can be done on the land (**section 41**), the state of the land on return from temporary possession (**section 42**), the restrictions preventing entry to any home (**section 43**), the powers to gain entry where entry is prevented (**sections 44 and 45**) and matters relating to the duration of the possession (**section 46**).

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

134. **Section 37** permits the Scottish Ministers to take temporary possession of specified land for the period required for specific purposes. Provision of this sort is standard in legislation authorising works.

135. Subsection (1) provides that the Scottish Ministers may enter and take temporary possession of the land specified in columns (1), (2) and (3) of **schedule 10** for either the specified purposes mentioned in column (4) or for any other purpose in connection with or in consequence of the works specified in column (5) of that schedule where the purpose is considered necessary or expedient by the Scottish Ministers.

136. Subsection (2) provides for the duration of temporary possession.

137. As the land under **section 37** is being taken only temporarily the Scottish Ministers are obliged as a consequence of the provisions within **section 42** to remedy any damage that is caused to the land and ensure the security of the land whilst they are in occupation. They are not obliged, however, to replace any buildings or apparatus or vegetation that may be removed during the temporary possession of the land.

138. To ensure any person whose interests are affected by temporary occupation is compensated for any loss suffered the Scottish Ministers are required under **section 54** to pay compensation.

### **Section 38 – Power to enter land for other purposes**

139. This section allows the Scottish Ministers to enter any land in order to survey the land, to carry out archaeological or other investigations, to maintain an access, to protect the Forth Crossing works or to protect any flora, fauna or property. The land so entered could be land within the limits of deviation or land within **schedule 9** but might also be land sitting outside those designations. The power to enter land, however, is circumscribed in that it can only be for purposes connected with the Bill.

140. There are existing powers in section 121 (Power to obtain road-making materials) and 140 (Powers of entry) of the Roads (Scotland) Act 1984 (c.54) which provide powers of entry for certain purposes. However, those powers do not cover the specific purposes as set out in **section 41** of the Bill.

141. The reasons for which the Scottish Ministers can take entry to land under **section 38** are set out in paragraphs (a) to (e). The Scottish Ministers may use the powers conferred by paragraph (a) to access land to survey or assess, for instance, the visual impact of an embankment from a distance in order to confirm environmental mitigation. Paragraph (b) provides a power to carry out archaeological or other investigations. Paragraph (c) permits entry for the purposes of maintaining an access under the terms of the provisions of **section 15(7)**.

142. Paragraph (d) is included to provide the Scottish Ministers with an emergency power of entry in order to protect the Forth Crossing works. This could arise, for instance, where a neighbouring landowner is undertaking works on their own land which may affect the stability of the Forth Crossing works. Paragraph (e) enables the Scottish Ministers to gain access to protect someone else's land or property or the flora or fauna of that land which may be affected by the carrying out of the works.

### **Section 39 – Advance entry on land to be acquired**

143. The 1845 Lands Act permits entry on land under compulsory purchase powers only after full payment has been made (section 83) or after the body with the compulsory purchase powers has deposited in a bank as security either the compensation claimed by the landowner or a sum representing the value of the land as valued by a valuer appointed by the sheriff (section 84). Sections 85 and 86 require the money to remain in the bank as a security to be distributed as directed by the sheriff. Section 87 imposes financial penalties on entering land without complying with the procedures, and in the event of a landowner refusing entry even after full payment has been made, the only recourse is to apply to the sheriff for a possession order. The procedures are cumbersome and time consuming. **Section 21** has disapplied these provisions and the purpose of **section 39** of the Bill is to provide for a modern procedure to apply so as to ensure that the works are not delayed by negotiations with landowners about the compensation to which they are entitled. As landowners are to be obliged to give up their land in any event, the amount of compensation is a completely separate issue from possession of the land.

144. It can be seen from the explanation to **section 35** that a general vesting declaration could take at least three months to take effect (that is two months for the serving of the compulsory purchase order and a further 28 days for the declaration to take effect). To wait three months under the general vesting process or conceivably longer in respect of a notice to treat or a general vesting declaration which is subject to a notice of objection to severance initiated by the land owner could have implications for the construction schedule of the scheme. So as to ensure that the delivery of the scheme is not unduly affected **section 39** permits the Scottish Ministers to enter and take possession of land before they have title to that land.

145. **Section 39** specifies that the Scottish Ministers may only enter and take possession of land on which they have either served a notice to treat (**section 30**) or made a general vesting declaration (**section 35**)

### **Section 40 – Notice of entry**

146. **Section 40** sets out the notice arrangements which the Scottish Ministers must apply when seeking entry to land. It ensures that landowners will know when the Scottish Ministers intend to enter their land and for what purposes.

147. When the Scottish Ministers wish to take temporary possession of land for a purpose set out in **schedule 10** or authorised by **section 37(1)(b)** or wish to take advance entry to land under **section 39** they must give at least 28 days notice. This time period is so that the owner or occupier can undertake any arrangements that they need to make in consequence of the possession of their land by the Scottish Ministers. An example might be to make necessary arrangements, in an agricultural setting, to relocate stock.

148. Subsection (1)(b) requires the Scottish Ministers to give on the first occasion seven, and thereafter under subsection (1)(c) three, days' notice to the owner or occupier where entry is to be taken under **section 38**. The shorter time given for entry under **section 38** is consistent with the timescale that applies under section 140 of the Roads (Scotland) Act 1984 for the purposes of surveying, boring, inspecting and the like. To ensure that the land owner is fully apprised of the

activities that are to be carried out on his or her land the Scottish Ministers must under subsection (2) provide details in the notice of the purposes for which they wish to enter land.

149. It may not be practical to give advance notice to a landowner that entry is required for a particular purpose under **section 38**. Subsection (3), accordingly, allows a disapplication of the noticing procedures if the Scottish Ministers require access urgently and the purposes of entry are for the purposes of protecting the interests listed.

#### **Section 41 – Use of land**

150. **Section 41** sets out the action that may be taken after land is entered. Subsection (2) provides, by way of illustration, a list of things the Scottish Ministers may do in relation to the land. That list is similar to matters under section 140 of the Roads (Scotland) Act 1984 which is applied in respect of constructing or maintaining roads. It should be noted that any purpose for which entry is required must be stated in the notice issued in accordance with **section 40**.

#### **Section 42 – Duty to remedy damage etc.**

151. **Section 42** ensures that the Scottish Ministers, before giving up temporary possession of land, remedy any damage that they have caused on that land and ensure that they leave that land in a state of security that is no worse than when they took possession. The character of the land may be fundamentally changed as a consequence of its temporary use and consequently the Scottish Ministers under subsection (2) are not obliged to replace any building, apparatus or vegetation that was removed from land in order to facilitate the purposes for which the Scottish Ministers required possession. **Part 6** of the Bill makes provision for compensating landowners for losses incurred.

#### **Section 43 – No power to enter homes**

152. The purpose of **section 43** is to prohibit the Scottish Ministers from entering any house or building occupied as a residence. This is because under the terms of **sections 37** and **38**, which provide entry to land for particular purposes, there is no requirement for the Scottish Ministers to enter such a house or building.

#### **Section 44 – Warrants authorising entry**

153. **Section 44** reflects the position that applies in section 140(8) of the Roads (Scotland) Act 1984 by requiring a warrant to use, if necessary, reasonable force to enter land. Subsection (1) sets out the terms of warrant and subsection (2) provides the test that the sheriff or justice of the peace must apply prior to granting a warrant. Subsection (3) provides that a warrant cannot authorise the use of force against individuals. Subsection (4) provides for the extent of the life of the warrant which will expire either when the purpose for which it is granted is no longer required or, if earlier, the time period specified in the warrant has expired.

#### **Section 45 – Obstruction**

154. Under section 140(9) of the Roads (Scotland) Act 1984 a person intentionally obstructing entry commits an offence. **Section 45** applies similar provisions in respect of the Bill.



## **Section 46 – Suspension of real burdens and servitudes etc.**

155. Section 106 of the Title Conditions (Scotland) Act 2003 (asp 9) provides for the extinguishment of real burdens and servitudes etc. on the permanent compulsory acquisition of land but not where the occupation is temporary. To ensure that the Forth Crossing works are not compromised by existing servitudes, real burdens or development management schemes **section 46** provides that these rights are unenforceable or disapplied in respect of land under **section 37** or **39** for the period of possession. A definition is provided within **section 46** for the period of possession over which servitudes, burdens or development management are unenforceable or disapplied.

## **PART 6 – COMPENSATION**

156. This Part sets out the framework for compensation (**section 47**), matters that must be taken into account when considering compensation (**sections 48 and 49**), entitlement to compensation and the process for addressing any dispute as to that entitlement or the level of compensation (**sections 50 to 56**).

157. The Bill applies the same procedural rules, safeguards and requirements regarding compensation as generally apply for land and rights purchased compulsorily. The rules for calculating the basis and amount of compensation are contained in the Land Clauses Acts (see paragraph 75) and the Land Compensation (Scotland) Act 1963 (c.51) and the Land Compensation (Scotland) Act 1973 (c.56).

158. The 1963 Act, which deals with assessing compensation and resolving disputed compensation claims, applies to the compulsory acquisition of land. The 1973 Act covers compensation for a decrease in value of land caused by use of public works and defines the physical factors that will give rise to a claim for compensation. The general principles with regards to compensation that these Acts embody are collectively known as the “compensation code”.

159. The 1845 Lands Act provides that in estimating the compensation to be paid, regard is to be had first of all to the value of the land to be taken and secondly to the depreciation in the value of any remaining land caused by severance or injurious affection (section 61 of the 1845 Lands Act). This is the basic principle by which compensation is assessed. **Section 21(1)** of the Bill incorporates section 61 of the 1845 Lands Act.

160. In addition to this basic principle it is generally accepted that any increase in value to land caused by the scheme underlying the acquisition is to be ignored. This principle is embodied within the 1963 Act which provides that:

- any depreciation in the value of land due to the prospect of the land being compulsorily acquired is to be ignored (section 16 of that Act);
- any increase or decrease in the value of the land due to the scheme underlying the acquisition is to be ignored (section 13, schedule 1); and

- any increase in the value of adjoining land in the same ownership as a result of the scheme is to be set off against the compensation for the land compulsorily acquired (section 14 and 15 and schedule 1).

161. Accordingly, compensation is generally available for:

- the value of land;
- disturbance, being losses such as, for example, removal expenses or loss of profits, arising as result of displacement from the land acquired;
- injurious affection being depreciation, for example, caused by the construction or use of works, in the value of land retained by a land owner; and
- severance being a specific type of injurious affection arising when part of an area of land held by the same owner is taken.

162. The 1963 Act contains provisions on the assessment of compensation in respect of interest in land. In particular it sets out in section 12 the rules on assessing compensation and provides that the Lands Tribunal for Scotland is responsible for dealing with any disputes as to compensation for compulsory purchase.

163. **Part 6** of the Bill makes particular reference to the aforementioned Acts and where appropriate explanations are provided as to the application or disapplication of various provisions within those Acts as they relate to provisions within the Bill.

### **Section 47 – Land Compensation (Scotland) Act 1963**

164. **Section 47** expressly adapts the application of the provisions of the Land Compensation (Scotland) Act 1963 in respect of land compulsorily acquired under **section 22**. Paragraph (a) ensures that the Bill falls within the terms of a “special enactment” and therefore enables the provisions to be applied appropriately. Paragraph (b) disapplies section 14 of the 1963 Act, which makes provision for set-off. Since **section 48** of the Bill addresses set-off of betterment against compensation, section 14 is accordingly disapplied.

165. Paragraphs (c) and (e) are technical provisions which ensure that the Bill can attract appropriate provisions of the 1963 Act. Similarly, paragraph (f) ensures that the 1963 Act attracts the provisions of the Bill in its construction.

166. Paragraph (d) ensures that references in sections 22 and 23 of the 1963 Act to the date of service of the notice to treat include references to the date the general vesting declaration is made where title to land is taken by general vesting declaration as both the procedure of notice to treat and general vesting declaration are available to take title under the Bill.

### **Section 48 – Matters to be considered when assessing compensation**

167. This section ensures that the value of land for compensation is unaffected by any increase in value arising as a consequence of the Forth Crossing works. Land close to the roads, their junctions and the bridge approaches may become attractive to developers and, as a result,

increase in value. **Section 48** makes provisions for set-off, which is where the value of compensation to a land owner is set-off against any increase in value in any contiguous land that the land owner may have. This approach is consistent with that which applies under section 110 of the Roads (Scotland) Act 1984 (c.54) and in this way a land owner affected by the Forth Crossing works is treated in the same way as a land owner affected by a roads scheme made under the 1984 Act.

168. Paragraphs (a) to (c) set out what the Lands Tribunal for Scotland must do or have regard to when assessing compensation.

### **Section 49 – Matters to be ignored when assessing compensation**

169. This section addresses the situation where a land owner does something with the deliberate purpose of seeking to obtain compensation or increased compensation. This principle has been put in statutory form by paragraph 7 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) and applies to the compulsory acquisition of roads under the Roads (Scotland) Act 1984. A provision is required under the Bill so that this principle is consistently applied. Accordingly, under subsection (1) the Lands Tribunal for Scotland, when making any determination on compensation, must not take into account either the creation of an interest in land or any land value enhancement if they are satisfied that the purpose of that interest or enhancement was to obtain compensation or increased compensation. These provisions are precedented.<sup>18</sup>

170. Subsection (2) provides a definition of “land value enhancement”.

### **Section 50 – Compensation: partial acquisition etc.**

171. **Section 50(1)** ensures that the Scottish Ministers must in addition to paying compensation for the value of any interest (which includes servitudes and rights) in the land acquired pay compensation for any loss resulting from the severance of the land.

172. Subsection (2) provides that when the Scottish Ministers withdraw a notice to treat under **section 32(4)** they must pay the land owner compensation for any expense caused by the giving and withdrawal of the notice to treat. This provision is required so that the land owner is appropriately compensated for any disturbance that may be caused. If there is any dispute about entitlement to compensation or the amount of any compensation the matter will be determined by the Lands Tribunal for Scotland. Either the land owner or the Scottish Ministers can approach the Lands Tribunal for a determination.

### **Section 51 – Compensation: servitudes and other rights**

173. There are at least five situations where compensation may be payable for the acquisition or extinguishment or disapplication of servitudes or other rights. Those situations are:

- (i) where a right is directly purchased permanently or temporarily (see **section 24**);

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<sup>18</sup> See section 22 of the Edinburgh Airport Rail Link Act 2007 (asp 16) and section 17 of the Glasgow Airport Rail Link 2007 (asp 1).

- (ii) where land is purchased, rights in land are extinguished or disapplied and the owner's other land (benefited property) suffers (see **section 25**);
- (iii) where land is purchased, rights in land are extinguished under **section 25** and the holder of a personal real burden suffers loss; and
- (iv) where a right is extinguished on land that the Scottish Ministers currently own.

174. Compensation for acquisition or extinguishment of a servitude or right under **section 22** (see categories (i) and (iv) above) is provided for by **section 51**.

175. Compensation for category (ii) above is provided by virtue of section 6 of the 1845 Railways Act which makes provision whereby a benefited proprietor is entitled to compensation where their interest in land has been injuriously affected when a servitude or other right is extinguished. Section 6 applies by incorporation under **section 21(2)** of the Bill.

176. Compensation for category (iii) above is provided by **section 51(2)** which ensures that any person who loses the right to enforce a personal real burden is entitled to compensation.

177. **Section 51** ensures compensation is payable in respect of the circumstances set out above and provides that as part of the determination of the compensation payable that account is taken of any new servitude or real burden created by the Scottish Ministers. For illustration, this means that a person could be compensated for the loss of a right to do something on their land and further compensated because the Scottish Ministers have taken a right to do something such as to provide access to Forth Crossing works over that person's land thus further affecting the land owner's enjoyment of his or her land.

178. Subsection (3) sets out the process for resolving any dispute as to entitlement to compensation or the amount of any compensation.

#### **Section 52 – Compensation: cutting down, lopping, or cutting back roots of, trees or shrubs**

179. **Section 52** provides for the Scottish Ministers to pay compensation to any person who suffers loss arising from the exercise of the powers conferred by **section 10**.

180. Under subsection (2) any dispute as to entitlement to compensation or the amount of compensation will be determined by the Lands Tribunal for Scotland in accordance with the Land Compensation (Scotland) Act 1963.

#### **Section 53 – Compensation: stopping up**

181. **Section 53(1)** provides for compensation in respect of interests affected by the stopping up of a road or access by ensuring that any person with an interest in land who suffers loss or disturbance as a result of action taken by the Scottish Ministers in stopping up a road (see **section 14**) or an access (see **section 15**) is entitled to compensation.

182. Subsection (2) provides that any dispute as to entitlement to, or amount of, compensation is determined by the Lands Tribunal for Scotland under the Land Compensation (Scotland) Act 1963 although account must be taken, in terms of subsection (3) of any new road or means of access provided.

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

183. This section also reaffirms the general principle of compensation for interests being affected in circumstances where a person with an interest in land suffers loss or disturbance as a consequence of the Scottish Ministers entering or using land temporarily. Subsection (1) provides for compensation to be payable where entry is taken to land under **sections 37 or 38**; where, having taken such entry, Ministers use the land in terms of **section 41**; or where rights or burdens are suspending during such entry (**section 46**).

184. Subsections (2) and (3) make provision as to how a dispute regarding compensation is to be determined and subsection (4) sets out what factors are to be taken into account in assessing compensation.

185. Subsection (5) ensures that compensation payable under **section 54** does not preclude compensation being paid for loss or damage arising as a result of the Forth Crossing works under section 6 of the 1845 Railways Act or any other enactment as long as a person is not compensated for the same thing twice.

#### **Section 55 – Compensation: advance entry**

186. **Section 55** provides that where the Scottish Ministers take advance entry to land under **section 39**, compensation is payable from the point that entry is taken as if the provisions in the 1845 Lands Act on entry on lands had been complied with or the land had vested in the Scottish Ministers (depending on whether the notice to treat or general vesting declaration procedure is used).

187. Where an acquiring authority, which in the case of the Forth Crossing works will be the Scottish Ministers, have taken possession of any land they are obliged under the terms of section 48 of the Land Compensation (Scotland) Act 1973 to make an advance payment on account of any compensation payable by them for the compulsory acquisition of any interest in that land. The process and the calculation of the amount of the advance payment are set out in section 48 of the 1973 Act. Subsection (2) ensures that the operation of the provision in the 1973 Act is not precluded by **sections 37 or 55** of the Bill.

#### **Section 56 – Compensation where notice to treat becomes invalid**

188. **Section 56** provides that a person is entitled to compensation from the Scottish Ministers for any loss arising as a result of a notice to treat subsequently being invalidated under the terms of **section 34**. This would cover, for example, the situation where a person may have taken actions in the expectation that the notice to treat would have progressed and resulted in their land being taken.

189. Subsection (2) ensures that the Lands Tribunal will determine any dispute and subsection (3) provides that interest is payable at the rate prescribed under section 40 of the Land Compensation (Scotland) Act 1963 from the date of the notice becoming invalid until the date of payment.

## **PART 7 – STATUTORY UNDERTAKERS**

190. This Part sets out the rights and responsibilities of the providers of public utilities (**sections 57 and 58**), the compensation procedures for owners or occupiers where reconnection to utilities is required (**sections 59 and 60**) and what may happen to apparatus in a stopped up road (**section 61**).

### **Section 57 – Apparatus affected by works**

191. **Section 57** concerns the rights of providers of certain utilities, including water, gas, electricity, sewerage and telecommunications services to maintain their supplies through apparatus that will or may be affected by the Forth Crossing works. These providers are frequently referred to as “statutory undertakers” and that is the expression used in sections 224 to 227 of the Town and Country Planning (Scotland) Act 1997 (c.8). Those sections provide a statutory code that applies in certain cases where the use of land for planning purposes makes it necessary to extinguish statutory undertakers’ rights in relation to apparatus.

192. The code provides for the acquiring authority to require the relocation of apparatus of the statutory undertakers and for the statutory undertaker to object to the proposal with disputes being determined by the Scottish Ministers. Compensation for relocation is payable by the acquiring authority under section 232, 233 and 235 of the 1997 Act.

193. The extinguishment of statutory undertakers’ rights has precedence when constructing roads<sup>19</sup> or the construction of other works authorised by Acts of the Scottish Parliament<sup>20</sup>.

194. **Section 57(1)** provides that provisions in respect of the 1997 Act may apply in respect of land that is to be acquired (whether compulsorily or voluntarily), appropriated or used or about to be used for the purposes of the Bill. Such land may include land that is already owned by the Scottish Ministers. Subsection (1)(a) specifically applies sections 224 to 227 and subsection (1)(b) applies all other provisions of sections of the 1997 Act that are needed to ensure the effective operation of sections 224 to 227, including provisions in respect of compensation.

195. Subsection (2) limits the purpose for which sections 224 to 227 apply to the carrying out of the Forth Crossing works.

196. Subsection (3) ensures that Scottish Water as suppliers of sewers and sewage disposal works are included within the term of statutory undertakers for the purpose of the Bill. Under the

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<sup>19</sup> Section 134 of the Roads (Scotland) Act 1984 (c.54), which applies and extends the relevant sections within the 1997 Act.

<sup>20</sup> Section 34 of the Glasgow Airport Rail Link Act 2007 (asp 1).

1997 Act Scottish Water would only be caught as being a statutory undertaker for the supply of water.

197. Section 142 and 143 of the New Roads and Street Works Act 1991 (c.22) provide for a separate code governing works in roads and which will apply to certain of the Forth Crossing works. Accordingly, subsection (4) provides that **section 57** of the Bill and therefore the provisions of the 1997 Act have no effect in relation to apparatus affected by such works.

### **Section 58 – Works for roads purposes**

198. Part 4 of the New Roads and Street Works Act 1991 sets out matters for dealing with road works in Scotland. Sections 142 to 144 of the 1991 Act, set out what an authority executing “works for road purposes”(including “major works for road purposes”) shall do in relation to apparatus that is likely to be affected by the works. Section 145 of the 1991 Act defines works and major works for road purposes. Under the requirements of section 142 the authority must take all reasonable steps to give the statutory undertaker to whom the apparatus belongs reasonable facilities to monitor the work and comply with any reasonable requirements for the protection of the apparatus or securing access.

199. Where apparatus is likely to be affected by major works for roads purposes, section 143 sets out what the authority must do, along with the undertaker, to deal with apparatus, and section 144 sets out how the costs of executing the measures that are necessary are to be shared between the authority and the undertaker. The Road Work (Sharing of Costs of Works) (Scotland) Regulations 2003 (SSI 2003/509) have been made under the powers in section 144 of the 1991 Act and specify how the cost sharing between the authority and the undertaker is to be regulated.

200. **Section 58** defines what Forth Crossing works are to be considered works for road purposes, under paragraph (a) or, under paragraph (b), major works for road purposes, so the relevant regime under the 1991 Act applies.

201. Paragraph (c) ensures that the Bill can properly apply the provisions of the 1991 Act.

### **Section 59 – Compensation for removal of water, gas, electricity or communications apparatus**

202. Under section 134(3) of the Roads (Scotland) Act 1984 (c.54) where apparatus of a statutory undertaker is removed under section 224 of the Town and Country Planning (Scotland) Act 1997 any person who is an owner or occupier of premises to which a supply (e.g. gas, electricity etc.) was given from that apparatus is entitled to be compensated for having to connect the premises to other apparatus from which a supply is given. The purpose of **section 59** is to ensure that the principle of compensating for a loss of supply applies under the Bill.

203. Accordingly subsection (1) enables an owner or occupier to seek compensation from the Scottish Ministers for reconnection of a supply, provided that the supply was provided by apparatus of those described within subsection (2).

### **Section 60 – Compensation for removal of public sewer**

204. This section is similar to section 135 of the Roads (Scotland) Act 1984 which relates to compensation in respect of connection to, or construction of, sewers or a sewage disposal plant. **Section 60(1)** provides that, where a public sewer is removed, an owner or occupier is entitled to compensation in respect of reasonable costs incurred in linking to other sewers or a private disposal plant or under subsection (1)(b) constructing a sewage disposal plant and linking to that plant.

205. **Section 60(2)** makes provision in a scenario in which the owner of a private sewer is entitled to compensation in respect of reasonable costs incurred in linking to public sewers or a private disposal plant or, under subsection (2)(b), constructing a private disposal plant and linking to that plant.

### **Section 61 – Apparatus in stopped up roads**

206. **Section 61** provides that statutory undertakers preserve their rights in relation to or over any apparatus that may be placed under, in, on, over, along or across a road stopped up under **section 14**. In this respect the statutory undertakers are treated in a similar manner to that which applies under section 12 of the Roads (Scotland) Act 1984. Subsection (1)(a) preserves those rights whilst subsection (1)(b) provides a power to statutory undertakers to remove and reposition that apparatus. Subsection (2) however places a duty on statutory undertakers to exercise their power to remove and relocate equipment if the owner of the land of the stopped up road so reasonably requests. **Section 17** makes provision for ownership of the solum of a stopped up road.

207. Subsection (3) ensures that the costs of relocating apparatus in consequence of subsection (2) will be shared between the statutory undertaker and the Scottish Ministers according to the regime for determining and sharing costs in section 144 of the New Roads and Street Works Act 1991 and any regulations made under that Act.

## **PART 8 – PLANNING PERMISSION, LISTED BUILDINGS AND CONSERVATION AREAS**

208. This Part deems planning permission for the works (**section 62**) and provides for the relaxation of controls in respect of listed buildings so that work affecting those properties can proceed without requiring further separate authority (**sections 63 to 65**)

### **Section 62 – Planning permission**

209. **Section 62** provides for planning permission to be deemed to have been granted for the Forth Crossing works authorised by the Bill as though an application made to the planning authority had been called in and granted by the Scottish Ministers under section 46 of the Town and Country Planning (Scotland) Act 1997 (c.8).

210. Subsection (2) provides that this planning permission will lapse if the Forth Crossing works have not commenced within five years of Royal Assent



### **Section 63 – Relaxation of listed building controls**

211. As explained above, the Bill will deem planning permission for the Forth Crossing works to have been granted. It is appropriate that all planning issues should be considered at the same time. This section accordingly disapplies a separate statutory requirement to obtain listed building consent so that the Bill effectively ensures that all works can progress without the need for additional planning consents which might otherwise have impacted on the execution of the works.

212. Subsection (1) refers to the Listed Buildings Act which is defined in **section 65** as the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9). This is the Act that requires consent (called listed building consent) for works and operations affecting buildings that are listed under the Act as being of special architectural or historic importance. Subsection (1) disapplies section 6 of the Listed Buildings Act in respect of works that are specified in column (3) of **schedule 11** to the Bill in relation to the listed buildings that are set out in column (1) of the schedule. It is also disapplied in respect of any Forth Crossing works to a building that has been listed after 1 January 2009. Under section 6 works to demolish, alter or extend a listed building are restricted unless authorised. The disapplication of section 6 ensures that the works as specified in **schedule 11** to the Bill, or Forth Crossing works to a building listed after 1 January 2009, can proceed without the need to acquire listed buildings consent.

213. Subsection (2) ensures that a listed building enforcement notice does not apply where the work required by the notice would be rendered ineffective by Forth Crossing works to the listed building concerned. Under section 38(1) of the Listed Buildings Act the local authority has the power to do the things required by an enforcement notice if the recipient of the notice fails to comply. This subsection also ensures that the local authority cannot take such a step if the same circumstances apply.

214. Subsection (3) prevents the local planning authority from exercising its powers under section 49 of the Listed Buildings Act in relation to those properties listed in **schedule 11**, or a building listed after 1 January 2009, to carry out urgent preservation works if those works would be rendered ineffective, or substantially ineffective, by the Forth Crossing works.

215. Subsection (4) disapplies section 53 of the Listed Buildings Act in relation to the works specified in column (3) of **schedule 11**, or Forth Crossing works that may be carried out on a building listed after 1 January 2009. Section 53(1) of the Listed Buildings Act makes it a criminal offence to do or permit anything which causes or is likely to result in damage to a listed building. The works that may be done to a listed building under the Bill may amount to damage giving rise to an offence. Section 53(3) provides that section 53(1) does not apply to the execution of works authorised by planning permission or for which listed building consent has been given. As the Bill provides for the effective grant of planning permission by virtue of **section 62** and the effect of **section 63** and the inclusion of **schedule 11** is effectively to grant listed building consent for specified works, section 53 of the Listed Building Act ought not to apply to the Forth Crossing works.

216. Subsection (5) applies definitions of “affected listed buildings” and “authorised listed building works” for the purposes of **section 63**.

### **Section 64 – Demolition in conservation areas**

217. This section disapplies the provisions of section 66 (control of demolition in conservation areas) of the Listed Buildings Act from any building (which is not a listed building), which may be affected by Forth Crossing works authorised under the Bill and which may be included in a conservation area designated after 1 January 2009. The section therefore permits the demolition of a building within a conservation area without requiring consent.

### **Section 65 – Interpretation of Part 8**

218. This section defines terms used within this Part.

## **PART 9 – ENVIRONMENTAL MATTERS**

219. This Part sets out duties to mitigate the impact of the scheme on the environment (**section 66**), to comply with environmental undertakings (**section 67**) and the process to amend or replace those undertakings (**section 68**). It also ensures compliance with existing consent regimes protecting the water environment (**section 69**) and sets out procedures in respect of the control of noise (**section 70**) and what matters may constitute a statutory nuisance (**section 71**)

### **Section 66 – Mitigation of environmental impact**

220. **Section 66** imposes a positive duty on the Scottish Ministers regarding the environmental impacts of the Forth Crossing works (see **section 1**). The environmental statement that accompanied the Bill at introduction proposes certain mitigation measures. The effect of these measures will be to prevent or reduce environmental impacts being caused by the works. This section obliges the Scottish Ministers to do everything that is reasonably practicable to ensure that the environmental impacts of the construction or operation of the Forth Crossing works are no worse than the residual impacts identified in the environmental statement (the residual impacts are measurable environmental impacts).

### **Section 67 – Compliance with code of construction practice and noise and vibration policy**

221. **Section 67** imposes a duty on the Scottish Ministers to ensure compliance with the code of construction practice and noise and vibration policy, contained within the environmental statement. The test of ensuring compliance is everything which is reasonably practicable.

### **Section 68 – Amendment of code of construction practice and noise and vibration policy**

222. **Section 68** enables the Scottish Ministers to amend or replace the code of construction practice or the noise and vibration policy. Subsection (1) ensures that an amendment to or replacement of those documents must not reduce the standards of mitigation or protection provided for in an earlier version.

223. Subsection (2) sets out a process of notification and consultation with specified bodies which the Scottish Ministers must follow before making an amendment to or replacement of the code of construction practice or the noise and vibration policy. The specified bodies which are listed at subsection (3) are not obliged to respond to any consultation but, if they do so, the

Scottish Ministers must have regard to their views. Copies of any amended or replaced documents must be sent to the bodies consulted and reasonable steps taken to bring them to the attention of the public.

### **Section 69 – Protection of water environment**

224. The Forth Crossing works include works that will include activities which need to be controlled in order to protect the water environment and such controls are applied by regulations made under the Water Environment and Water Services (Scotland) Act 2003 (asp 3). **Section 69** ensures that, where appropriate, authorisation will be sought under those regulations and the relevant works will be carried out in accordance with that authorisation.

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

225. The carrying out of the Forth Crossing works will inevitably cause a high level of noise and vibration. The regulation of construction noise is dealt with by the Control of Pollution Act 1974 (c.40) and the Environmental Protection Act 1990 (c.43). The regime for control of construction noise under the 1974 Act is operated by local authorities. The Forth Crossing works will affect more than one local authority area. Accordingly, these local authorities could operate different policies in relation to the control and consent for construction noise and this could prevent completion of the Forth Crossing works.

226. Under section 60 of the 1974 Act a local authority can serve a notice on persons responsible for construction in order to impose requirements on the way that the construction is carried out. **Section 70(1)** disapplies section 60 but only in circumstances where the Forth Crossing works are carried out in accordance with the code of construction practice and the noise caused by those works are within the thresholds set out in that code.

227. If the Scottish Ministers wish to undertake works that emit a noise level higher than the threshold then an application for consent under section 61 will be required to be made to the relevant local authority.

228. Subsection (2) disapplies subsection 61(9) of the 1974 Act which has the effect that if a consent is granted under section 61 in respect of any Forth Crossing work, that consent will not contain a statement that the consent is not a defence to any proceedings under section 82 of the 1990 Act.

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

229. Section 71 provides that noise which is caused by the Forth Crossing works which is not louder than the noise levels set out in the code of construction practice or, if it is louder, is in accordance with a consent granted under section 61 of the Control of Pollution Act 1974, cannot be a statutory nuisance as defined in section 79(1) of the Environmental Protection Act 1990. The effect of this is that a statutory nuisance abatement notice cannot be served under section 80 of the 1990 Act and a summary application to abate a statutory nuisance under section 82 of the 1990 Act cannot be successful, if the conditions set out in section 71 of the Bill are met. If the works were not being carried out in accordance with the code of construction practice or any

consent that may have been granted under section 61 of the 1974 Act an aggrieved person would still have remedy available to them under section 82 of the 1990 Act and a local authority could still serve an abatement notice under section 80. These provisions have precedence in other Acts authorising works.<sup>21</sup>

## **PART 10 – MISCELLANEOUS**

230. This Part includes general provisions concerning matters such as the definition of blight (as it relates to the Bill) (**section 72**), the certification and adjustment of the Parliamentary plans and the book of reference (**sections 73 and 74**), the procedures for issuing formal communications (**section 75**), ancillary provision (**section 76**), the application of the Bill to the Crown (**section 77**) the interpretation of terms used within the Bill (**section 78**), the date on which provisions are to come into force (**section 79**) and what the Bill is to be called (**section 80**).

### **Section 72 – Blighted land**

231. **Section 72** applies the planning blight provisions of Chapter 2 of Part 5 of the Town and Country Planning (Scotland) Act 1997 (c.8). Those provisions enable persons with a qualifying interest in land to access the statutory provisions set out in the 1997 Act to allow them to claim blight on their qualifying interest in land and seek to have that land acquired by the Scottish Ministers.

232. The effect of **section 72** is that:

a resident owner-occupier of a residential dwelling;

an owner-occupier of land with an annual value of £28,000<sup>22</sup>; or

an owner-occupier of an agricultural unit,

whose land is subject to compulsory purchase under the Bill may require the Scottish Ministers to purchase land at market value if, having tried to sell the property, the landowner has been unable to sell except at a lower price than might reasonably have been expected had the land not been subject to compulsory purchase.

### **Section 73 – Certification of Parliamentary plans, etc.**

233. **Section 73** makes provision for the authentication of a copy of the book of reference, the plans and the sections that will accompany the Bill, to enable certified copies once the Bill is enacted to be admissible in any future proceedings as evidence of the content of the proceedings without the need of the Scottish Ministers to prove the authenticity of the copy documents.

234. The Parliament's Guidance on Hybrid Bills makes it clear that the book of reference, the plans and sections are documents that the Clerk to the Parliament does not arrange to have printed and published. These documents may be required to execute any compulsory purchase authorised by the Bill. Since these documents are not published by the Parliament they will

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<sup>21</sup> See Crossrail Act 2008 (c.18).

<sup>22</sup> The value is currently £28, 000 (Town and Country Planning (Limit of Annual Value) (Scotland) Order 2005 (SSI 2005/594)).

necessarily be a copy of the book of reference, plans and sections submitted to the Parliament and a copy of that produced by the Scottish Ministers and not the Parliament. There is therefore a need to ensure that the content of the book of reference, plans and sections can be proved as being accurate and a true record of the documents that had been submitted to the Parliament. The Clerk to the Parliament is the appropriate authority to check the accuracy of these copies and certify them as being a true record. The certified copies will be admissible in any court proceedings without the need for any further proof of the authentication of their contents.

235. Subsection (1) confirms the list of documents. Subsection (2) places the Clerk under a duty to certify the documents and subsection (3) confirms that a certified document is admissible in any court proceedings.

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

236. **Section 74** provides a procedure allowing changes to be made to the Parliamentary plans or book of reference after the Bill has been passed. The provisions of this section have precedence in private Acts of the Scottish Parliament authorising works.

237. Subsection (1) allows the Scottish Ministers, where they need to correct an inaccurate description of land, ownership or occupation to make an application to the sheriff to correct the inaccuracy. If the sheriff is satisfied that the description is inaccurate they must certify that and how it is to be corrected.

238. Prior to making that application, under subsection (3), the Scottish Ministers must provide the owner and any occupier with at least 10 days' notice of their intention to make an application. Subsection (4) provides for a counter-notice procedure disputing that inaccuracy. Where a counter-notice is lodged the sheriff must hold a hearing (subsection (5)). If the sheriff decides to approve and certify the change that certification must, under subsection (6), be deposited in the office of the Clerk to the Parliament. The Parliamentary plans or book of reference shall be deemed, under subsection (7), to be corrected or amended according to the certificate.

239. Subsection (2) provides that, where a binding obligation has been entered into not to acquire the land within the limits of deviation or within **schedule 9**, the Scottish Ministers or the owner of the land may apply to have the Parliamentary plans and book of reference altered to reflect the agreement. The procedure of notification and determination is the same as that laid out in the procedure for addressing an inaccuracy.

240. This section ensures that binding obligations not to acquire land may be recorded by either party to that agreement and that implementation of the Bill is not prevented by mistaken misdescriptions. The Bill authorises under **section 22** the compulsory acquisition of land. That land is shown on the Parliamentary plans and described in the book of reference. A minor error in a description in one document might result in it being inconsistent with the other, which might in turn prevent proper identification of land to be acquired compulsorily. In the absence of the procedures as set out in **section 74** the compulsory purchase powers of the Bill could not be used in relation to that land.

241. Subsection (8) defines sheriff as the sheriff for the area in which land is situated.

### **Section 75 – Formal communications**

242. This section provides details of how a notice or an objection can be served. Subsections (3)(c) and (4) set the context within which documents can be served electronically. Subsection (3)(b) describes the proper address for the serving of notices by post. In those instances where the proper address cannot be ascertained and the matter relates to an interest in land subsection (5) provides for a notice to be addressed to either the owner or as the case may be the occupier and affixed to a building or object on or near the land.

### **Section 76 – Ancillary provision**

243. This section allows the Scottish Ministers to make provision for ancillary matters and to enable unforeseen circumstances which may arise following enactment to be addressed without having recourse to primary legislation. The scope of this power is restricted. It can only be used to make provisions which are of a supplementary, incidental, consequential, transitional, transitory or saving nature.

### **Section 77 – Crown application**

244. Subsection (1)(b) enables a right over or in Crown land (not in itself being a Crown right) to be acquired by compulsion with agreement from the appropriate authority. The right over or in Crown land may, for example, relate to a third party right of access over Crown land to provide access to other land. A right in Crown land can be acquired compulsorily if the interest is owned by the Crown as stipulated under subsection (2) and if the relevant Crown interest agrees, as set out in subsection (3).

245. Subsection (1)(a) when read with subsection (2) allows a right belonging to the Crown to be affected by any provision in the Bill with agreement from the appropriate authority.

### **Section 78 – Interpretation**

246. This section defines terms used within the Bill.

### **Section 79 – Commencement**

247. This section deals with commencement. Those provisions set out in subsection (1) come into force on enactment. It is for the Scottish Ministers, as explained in subsection (2), to make provision commencing other sections of the Bill.

### **Section 80 – Short title**

248. This section provides the short title which is the name by which the Bill if enacted may be cited.

## **SCHEDULES**

### **Schedule 1 – Principal works**

249. The schedule (introduced by **section 1**) contains a description of each of the principal works.

### **Schedule 2 – Ancillary works**

250. The schedule (introduced by **section 1**) provides for illustrative purposes a description of the type of ancillary works that may be undertaken within the Act limits.

### **Schedule 3 – Special roads**

251. The schedule (introduced by **section 11**) provides a list of the roads or proposed roads that the Scottish Ministers may designate as special roads. Columns (1), (2) and (3) respectively provide the relevant location, plan and work references for each road. Column (4) provides for the classes of traffic that may use the road once designated a special road under the Bill. The classes are set out in Schedule 3 (Classes of traffic for purposes of special roads) to the Roads (Scotland) Act 1984 (c.54).

### **Schedule 4 – Proposed trunk roads**

252. The schedule (introduced by **section 12(1)**) lists all new roads which are to be trunk roads on the date that the section comes into force. Columns (1), (2) and (3) respectively provide the location, plan and work references for each road.

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

253. The schedule (introduced by **section 12(2)**) lists those existing roads (or parts of roads) currently maintained by local roads authorities that are to become trunk roads. Columns (1) and (2) provide the location and plan reference for each road. Column (3) describes the road or part of road that is to be a trunk road and column (4) provides the plan reference points which show the length of road to be trunked.

### **Schedule 6 – Roads to be transferred to local roads authorities**

254. This schedule (introduced by **section 13**) lists those roads or parts of road, once created or improved, that are to be transferred to the local roads authority. Column (4) provides the local roads authority to which the relevant road or part of road will be transferred.

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

255. This schedule (introduced by **section 14**) is in two Parts. Part 1 lists those roads (column (3)) that will be stopped and the extent of the road to be stopped up (column (4)). No substitute road will be provided.

256. Part 2 of the schedule lists those roads that will be stopped up (column (3)), the length of road to be stopped up (column (4)) and details of the works that will provide for a substitute road (column (5)).

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

257. This schedule (introduced by **section 15**) is in two Parts.

258. Part 1 of the schedule lists those private accesses (column (3)) that will be stopped and the extent of the access to be stopped up (column (4)). No substitute access will be provided.

259. Part 2 of the schedule lists those accesses that will be stopped up (column (3)), the length of access to be stopped up (column (4)) and details of the works that will provide for a substitute access (column (5)).

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

260. This schedule (introduced by **section 22**) is in two Parts.

261. Part 1 of the schedule lists that land<sup>23</sup> which is outwith the limits of deviation (see **section 4**) that is to be acquired compulsorily for the purposes of the Forth Crossing works. The columns provide the location, and references for that land.

262. Part 2 of the schedule lists the rights that can be acquired compulsorily in the land specified in the schedule. In acquiring the rights the Scottish Ministers are not obliged to acquire all the land.

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

263. This schedule (introduced by **section 37**) specifies land of which the Scottish Ministers may take temporary possession. That possession is for the purposes as set out in column (4) of the schedule.

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

264. This schedule (introduced by **section 63(5)**) sets out in column (3) what works can be undertaken on the buildings as listed in column (1) without the requirement of having to obtain consent under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9).

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<sup>23</sup> For the purposes of the Bill the term “land” includes buildings, land covered by water, and any interest in land (an interest being any servitude or other right in land).



## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

265. This document sets out the financial implications of the Forth Crossing Bill. It has been prepared by the Scottish Government to satisfy Rule 9C.3.2(g) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament. It should be read in conjunction with the Policy Memorandum and the Bill itself. The Policy Memorandum, published separately, explains in detail the policy intentions of the Bill.

### **THE BILL**

266. The Bill facilitates the proposed scheme and seeks powers for:

- the construction of the new crossing and connecting roads to link to the road network;
- the upgrading of existing roads and junctions;
- changes to the designation and responsibility of ownership of specified existing roads; and
- the compulsory purchase or where appropriate occupation of land necessary for the scheme.

267. Consultation has been conducted with key stakeholders, sectors and groups affected by the proposals, including businesses.

268. A governance structure is in place to oversee the project and to ensure robust financial management. That structure comprises a Project Board with representation across the Scottish Government together with external representation and is responsible for advising on the strategic direction and progress of the Project up to and through a series of predetermined critical milestones. A Financial Advisory Group (FAG), reporting to the main Project Board, was set up to advise on substantive financial issues including the assessment and development of options to secure value for money and the most effective and efficient procurement and funding for the project. FAG continues to meet monthly to monitor the finance and procurement of the project, and since January 2009 provides advice to the Project Board on a wide range of financial and economic matters.

269. The governance structure and the project's disciplined approach resonate with the recommendations of Audit Scotland<sup>24</sup>, as they relate to its recent review of major capital projects in Scotland, and the conclusions and recommendations of the Holyrood Inquiry<sup>25</sup>.

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<sup>24</sup> Review of major capital projects in Scotland – Audit Scotland June 2008.

[http://www.audit-scotland.gov.uk/docs/central/2008/nr\\_080624\\_major\\_capital\\_projects\\_km.pdf](http://www.audit-scotland.gov.uk/docs/central/2008/nr_080624_major_capital_projects_km.pdf)

<sup>25</sup> [http://www.holyrood inquiry.org/FINAL\\_report/report.htm](http://www.holyrood inquiry.org/FINAL_report/report.htm)

## **ESTIMATE OF COSTS**

270. An estimate of the capital (at Q4 2006 price base) and outturn (at 2016) costs for the project was prepared in November 2008<sup>26</sup> to inform the Ministerial announcement of 10 December 2008<sup>27</sup>. Project costs and cash profiles are subject to continuous revision to reflect latest thinking on detailed design development, prevailing underlying prices for engineering operations, exchange rates, estimates of the future range of inflation to outturn. The figures shown in Table 1a and 1b are informed estimates based on the latest available information.

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<sup>26</sup> Forth Replacement Crossing Managed Crossing Scheme: Scheme Definition Report  
<http://www.transportscotland.gov.uk/files/documents/reports/j10724c/j10724c.pdf>

<sup>27</sup> Parliamentary statement on Strategic Transport Projects Review – 10 December 2008  
Scottish Parliament Official Report, Session 3, Col 13201

<http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-08/sor1210-02.htm#Col13201>

**Table 1a: Capital cost estimate**

<b>Element of the Forth Replacement Crossing Project</b>	<b>Estimated Cost at Q4 2006 Price base (£m)</b>
North Network Connections	128
South Network Connections	62
Bridge	543
Junction 1a, M9	39
Intelligent Transport Systems (Fife)	11
Employer's Costs	115
<b>Sub-total</b>	<b><u>898</u></b>
Risk Allowance	<u>115</u>
Optimism Bias Allowance	<u>169</u>
Non-recoverable VAT	<u>163</u>
<b>Total Estimated Capital Costs</b>	<b><u>1,345</u></b>

**Table 1b: Projected cost uplifted to outturn costs**

Total Estimated Capital Costs	1,345
Addition for Median Estimate of Construction Inflation	529
Addition for Cost of Capital Charge	170
<b>Total Estimated Outturn Cost</b>	<b><u>2,044</u></b>

271. It is to be noted that the expected outturn cost remains within the range of £1.72bn – £2.34bn as advised to the Scottish Parliament by the Minister for Transport, Infrastructure and Climate Change on 10 December 2008.

272. An explanation of Tables 1a and 1b is summarised below with more detail on cost estimates provided at Appendix A:

- **North Network Connections:** These comprise the road works and the implementation of Intelligent Transport Systems between the north bridge abutment and Admiralty junction, including the improvements to Ferrytoll junction.
- **South Network Connections:** The road works to the south incorporate the new connection from the M9 spur to the south bridge abutment and the implementation of Intelligent Transport Systems on that road, including a new junction at South Queensferry.
- **Bridge:** The costs incorporate the construction between and including the north and south bridge abutments. The work on the north and south network connections and the bridge are proposed to be let as a single contract.
- **Junction 1a, M9:** The work involves the remodelling of the junction and the implementation of Intelligent Transport Systems on the M9 spur and the M9 from Junction 1a to the Newbridge junction. This work is proposed to be let as a separate contract.
- **Intelligent Transport Systems (Fife):** The implementation of Intelligent Transport Systems from Admiralty junction on the M90 north to Halbeath junction. This work is proposed to be let as a separate contract.
- **Employer's direct costs:** Costs incurred by the Scottish Ministers have been assessed for the preparation of the scheme (£51m), including the costs of the tendering process, and for supervision of the works during execution of the contracts (£33m). In addition certain preparatory utilities diversions will be undertaken as advanced works (£7m), together with the purchase of Intelligent Transport Systems equipment which will be supplied directly to the contractor (£14m). An assessment of the land and compensation costs (£10m) to be incurred by the Scottish Ministers has been supplied by the Valuation Office Agency (District Valuer).

273. The following have been added to the construction costs within Table 1a:

- **Risk allowance:** In any large civil engineering project there are inherent risks and uncertainties. To take these into account, a risk analysis (Appendix B) is undertaken to uplift the scheme cost estimates, in accordance with the HM Treasury guidance<sup>28</sup>. Current allowances have been included for foreseeable risks and opportunities of £45m for the network connections and £70m for the bridge.
- **Optimism bias:** This term is used to describe the tendency for project costs to be under-estimated due to unforeseen circumstances. Inclusion of an allowance for Optimism Bias (Appendix C) in estimates removes the need for fixed contingencies. The allowance for optimism may be reduced as more reliable cost estimates are built

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<sup>28</sup> HM Treasury The Green Book Appraisal and Evaluation in Central Government paragraph 5.57 Risk and Uncertainty [http://www.hm-treasury.gov.uk/data\\_greenbook\\_index.htm](http://www.hm-treasury.gov.uk/data_greenbook_index.htm)

up and scheme specific risk work is undertaken. The standard methodology for optimism bias as set out by HM Treasury<sup>29</sup> has been applied. Optimism Bias has been calculated at the rate of 8% for the network connections and 22% for the bridge resulting in a current allowance of £23m for the network connections and £135m for the new bridge. Optimism Bias is applicable to certain elements of the Employer's Costs and has been assessed in the same manner at 15%, resulting in an allowance of £11m.

- **Non-recoverable VAT:** The current VAT position is calculated on the basis that 85% of the roads to the south and 65% of the roads to the north have been included along with the new bridge as new construction costs liable to non-recoverable VAT.

274. The following costs have been added to the total capital costs (estimated at Q4 2006 prices) so as to provide the uplift to Outturn Costs as presented in Table 1b:

- **Inflation:** The Q4 2006 estimate is uplifted to an outturn estimated using the latest published construction inflation data together with an allowance for future inflation, specific to the types of service, resources and materials employed. Overall, the projected average annual construction inflation rate projected has a median value of approximately 5.3%. The latest published inflation data shows a reduction in actual inflation against that previously forecast, however, the recent global economic events and large movements in resource and commodity costs require circumspection to be applied to the long-term forecasts of construction inflation assumed for budget purposes.
- **Cost of capital charge:** Under current government budgeting and accounting rules, the cost of holding assets must be recognised through the inclusion of a cost of capital charge. This charge has been calculated as 3.5% of the cumulative capital expenditure on the project. HM Treasury have announced their intention of removing the cost of capital charge from all budgets, with effect from 2010-11. If the changes proposed by HM Treasury are implemented, there will be no net effect on the Scottish Government or on the Forth Crossing project: all that will happen is that this element of cost will be removed, and the Scottish budget will be reduced accordingly.

## **Profile of costs**

275. An illustrated spend profile for the project is shown in Table 2. The overall timetable for the construction phase will be dictated by the duration, at up to 5½ years, of the new bridge works. The co-ordination of works will be crucial to ensure the effective management of engineering interfaces (for example, that road works do not unduly compromise access to the existing Forth Road Bridge). The spend profile has been generated by applying the median inflation forecast to the cost spend produced from a potential construction programme. The selected contractors will propose with their tenders their own sequencing of works and programme and this will inform the necessary revisions to the illustrated spend profile for forward budgeting purposes.

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<sup>29</sup> HM Treasury The Green Book Appraisal and Evaluation in Central Government paragraph 5.61 Optimism Bias [http://www.hm-treasury.gov.uk/data\\_greenbook\\_index.htm](http://www.hm-treasury.gov.uk/data_greenbook_index.htm)

**Table 2: Cost spend profile**

	<b>2007/08-09/10</b>	<b>2010/11-12/13</b>	<b>2013/14-15/16</b>	<b>Post 2016</b>	<b>Total</b>
<b>£m</b>	56	613	1,179	196	<b>2,044</b>

**Whole life costs**

276. The road network and the bridge are designed for a long life and for the purposes of an analysis of whole life costs a period of 60 years has been used in line with current practice<sup>30</sup>. The operating and lifecycle costs (undiscounted at Q4 2006 prices in £m) are shown in Table 3. The term operating costs in this context means the cost of such matters as inspections and condition surveys, carriageway repairs, drain clearing and winter gritting. Lifecycle costs include the replacement of items that have reached the end of their serviceable life such as road pavement replacement, steelwork repainting and replacement of bridge stay-cables.

277. In addition to the operation and lifecycle costs of the road network and the bridge a consequential reduction in the operation and lifecycle costs of the Forth Road Bridge are achieved. These reductions are realised due to the reduced levels of vehicular traffic on the bridge with consequential reduction in operating costs and longer intervals between lifecycle interventions. Additionally, the reduced loading means that the bridge could remain operational without the requirement for main cable replacement.

**Table 3: Operating and lifecycle refurbishment costs of the scheme over 60 years**

<b>Cost Element</b>	<b>£m (Q4 2006 (rounded))</b>
Operating costs	287
Lifecycle Refurbishment costs	668
Wholelife cost savings from existing bridge	(594)
<b>Total cost</b>	<b>361</b>
<b>Annual average cost</b>	<b>6</b>

<sup>30</sup> Transport Scotland - Scottish Transport Appraisal Guidance, Technical Database paragraph 9.5.1 Appraisal Period <http://www.transportscotland.gov.uk/stag/home>

## **SOURCE OF FUNDING**

278. The Scottish Ministers advised the Scottish Parliament on 10 December 2008 that:  
“..the Forth replacement crossing will be publicly funded and will be procured through a conventional design and build contract”.<sup>31</sup>

279. The procurement strategy is discussed at Appendix D and within the Policy Memorandum.

### **Contingent liability**<sup>32</sup>

280. The Scottish Government have provided a guarantee to the two bidding consortia for the principal contract (the bridge and the north and south network connections) to reimburse the costs for the development of competitive tenders up to a limit of £10 million each in the event of failure of the Bill to be enacted or an elective decision of the Scottish Ministers not to proceed with awarding the contract. The contingent liability is therefore £20 million.

## **COSTS TO THE SCOTTISH ADMINISTRATION**

281. The capital costs and whole life costs detailed in Tables 1a and 1b and Table 3 respectively will accrue to the Scottish Government. The spend profile, as illustrated at paragraph 275, covers the period through to 2016. It should be noted however that the final price will not be known until the work has been completed. This will depend on the tender prices received and actual values of inflation.

## **COSTS TO LOCAL AUTHORITIES**

282. There will be a small reduction to the roads maintenance budgets of The City of Edinburgh Council and Fife Council as a consequence of the transfer under the Bill of certain stretches of their roads to the Scottish Ministers. In total approximately 8.5 kilometres (or 5.3 miles) will be transferred. A significant proportion of the length of road transferring from local authorities to the Scottish Ministers relates to the recently completed M9 spur. Responsibility for any defects on this road continues to reside with the responsible contractor rather than the local authority and consequently the relief to the local authority budget is less than would have been the case if the M9 spur were not under a contractual defects correction period.

## **COSTS TO OTHER BODIES, INDIVIDUALS AND BUSINESSES**

283. There are no costs to be borne by other bodies for work over and above their normal duties or activities (e.g. the District Valuer, who determines compensation levels, will provide

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<sup>31</sup> Parliamentary statement on Strategic Transport Projects Review – 10 December 2008  
Scottish Parliament Official Report, Session 3, Col 13201

<http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-08/sor1210-02.htm#Col13201>

<sup>32</sup> Under the terms of the Agreement on the Budgeting Process, Scottish Parliament Paper 398  
<http://www.scottish.parliament.uk/business/committees/finance/Written%20Agreement%20between%20FC%20and%20Exec%20at%2022.6.05.pdf> the authority of the Parliament is required before the granting of a guarantee or indemnity in excess of £1 million. The Finance Committee of the Parliament took evidence on this matter on 15 and 22 September 2009 and approved the terms of the contingent liability on 22 September.

that service in relation to the relatively limited number of persons directly affected by the provisions of the Bill).

284. Those persons whose land and property interests are affected will be fully compensated in accordance with the provisions of the Bill. Compensation for those affected has been estimated, by the District Valuer, at £10m (see paragraph 272, Employer's direct costs).

285. The potential impacts of the scheme on businesses affected through land-take have been assessed within the Environmental Statement<sup>33</sup>. That detailed assessment identified that only two businesses are likely to endure an adverse impact that might have an effect on their viability.

286. Construction activity is likely to have a bearing on these businesses, which are located in close proximity to each other at North Queensferry. A Traffic Management Plan will be implemented which will include measures to minimise potential travel disruption and also ensure that access is maintained to these businesses during the works. It is, however, difficult to estimate the precise impact on the businesses and close liaison will be required throughout the life of the project between Transport Scotland, the contractor and the businesses concerned and the matter will be kept under constant review by all parties.

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<sup>33</sup> See Chapter 7 of the Environmental Statement.



## APPENDIX A: COST ESTIMATES

This Appendix provides a detailed breakdown of cost estimates for each element of the project.

**Table A1: North Network Connections Cost Estimate Breakdown**

<b>Description</b>	<b>£m (Q4 2006)</b>
Preliminaries <sup>1</sup>	34
Roadworks	32
ITS <sup>2</sup>	6
Structures	46
Environmental Mitigation Works	2
Accommodation Works	1
Contractor's Design	5
Statutory Undertakers' Costs	2
<b>Total</b>	<b>128</b>

Notes to Table A1:

<sup>1</sup> **Preliminaries:** The Preliminaries section of the estimate allows for the costs associated with setting up the site and the management of the construction phase of the project. This includes allowances for the Contractor's site offices and staff costs and also covers items such as site wide plant including cranes and transport. Traffic management is included in this section.

<sup>2</sup> **ITS** costings are comprised of two primary elements, ITS equipment and ITS cabling, cabinets and civil infrastructure works. The costs are developed on the basis that ITS equipment will be purchased by Transport Scotland through existing framework contracts, whilst the Contractor will be responsible for installation, commissioning and integration. Equipment supply has therefore been included within the Employer's costs. All ITS civil infrastructure costs are included in the tables contained in this Appendix.

**Table A2: South Network Connections Cost Estimate Breakdown**

<b>Description</b>	<b>South Network Connections £m (Q4 2006)</b>
Preliminaries <sup>1</sup>	13
Roadworks	26
ITS <sup>2</sup>	6
Structures	8
Environmental Mitigation Works	3
Accommodation Works	1
Contractor's Design	3
Statutory Undertakers' Costs	2
<b>Total</b>	<b>62</b>

Notes to Table A2:

<sup>1</sup> **Preliminaries:** As Table A1.

<sup>2</sup> **ITS:** As Table A1.

**Table A3: Bridge Cost Estimate Breakdown**

<b>Description</b>	<b>Bridge £m (Q4 2006)</b>
Special Preliminaries <sup>1</sup>	16
Foundations	110
Structure	230
Finishes	51
Accommodation Works	1
Environmental Mitigation	1
General Preliminaries <sup>2</sup>	100
Site Investigation	3
Contractor's Design	31
<b>Total</b>	<b>543</b>

Notes to Table A3:

<sup>1</sup> **Special Preliminaries** in the bridge estimate account for the provision and removal of temporary facilities such as access roads and jetties, works compounds and procurement of concrete batching plants, etc. Items directly associated with a work activity have been priced with the activity in either the foundations or structure portion of the estimate, e.g. costs associated with the deck assembly yard have been included with deck assembly steelwork. The costs of operating the batching plants have been included in the relevant work sections involving on site concrete construction.

<sup>2</sup> **General Preliminaries:** A possible organisation structure has been produced and matched to the construction programme to establish a staffing profile for the various activities. This profile has then been priced to derive staff costs for each of the bridge construction's main activities and included within General Preliminaries. Similarly, the requirements for general plant, equipment, site accommodation (offices, stores, workshops, etc.) and indirect labour in precasting and assembly yards have been estimated and priced in General Preliminaries. Allowances have been included for the costs of acquiring performance bonds and insurances, and for financing the lag in the Contractor's cash flow.

**Table A4: Junction 1a, M9 Cost Estimate Breakdown**

<b>Description</b>	<b>Junction 1a £m (Q4 2006)</b>
Preliminaries <sup>1</sup>	11
Roadworks	12
ITS <sup>2</sup>	8
Structures	4
Environmental Mitigation Works	1
Accommodation Works	1
Contractor's Design	2
Statutory Undertakers' Costs	0
<b>Total</b>	<b>39</b>

Notes to Table A4:

<sup>1</sup> **Preliminaries:** As Table A1.

<sup>2</sup> **ITS:** As Table A1.

**Table A5: Intelligent Transport Systems (Fife) Cost Estimate Breakdown**

<b>Description</b>	<b>Fife ITS £m (Q4 2006)</b>
Preliminaries <sup>1</sup>	3
Roadworks	1
ITS <sup>2</sup>	7
Structures	0
Environmental Mitigation Works	0
Accommodation Works	0
Contractor's Design	0
Statutory Undertakers' Costs	0
<b>Total</b>	<b>11</b>

Notes to Table A5:

<sup>1</sup> **Preliminaries:** As Table A1.

<sup>2</sup> **ITS:** As Table A1.

## **APPENDIX B: RISK**

287. The assessment of the risk allowance has been undertaken using a quantified risk register comprising discrete risks (i.e. chance events) and uncertainties in cost estimations. The register has been populated using:

- Interviews: the technical leaders for the various specialists were asked to identify risks within their respective areas of responsibility/expertise;
- Workshops: risk workshops were held to ensure adequate coverage of interface risks;
- Continual reviews: All technical leaders have been required to identify risks as the project evolves.

288. The discrete risks have been quantified in terms of their probability and severity and recorded in the risk register. The cost impact of risks have been assessed using three-point estimates (i.e. minimum, most likely and maximum cost values), assuming the risk occurs. Uncertainties related to cost estimation have been incorporated as an uncertainty range percentage for each cost item from the capital cost estimates.

289. Probability and severity distributions for the aggregation of risks are modelled using Monte Carlo simulation software. The output from the risk modelling includes a contribution from both the discrete risk events and the uncertainties associated with cost estimates. The P50 value from the risk model output, that is the value with an equal probability of being under or overstated, has been used as the contingency risk value added to the base cost estimate to give the most likely risk adjusted estimate.

## **APPENDIX C: OPTIMISM BIAS**

290. HM Treasury requirements for project appraisal, contained within the Green Book and associated guidance documents, state that a project's capital cost estimate needs to be further increased to take account for "Optimism Bias". Optimism Bias is described as a necessary adjustment to reflect the historical tendency of project cost estimates to be optimistic in that they tended to underestimate the actual final cost outturn.

291. The assessment of Optimism Bias is a semi-quantitative process which takes account of the coverage for strategic items within the project's risk register, and for other mitigation in areas which are known to be contributors to increased outturn costs.

292. The Optimism Bias assessment for the project has been undertaken following the approach outlined in HM Treasury Supplementary Green Book Guidance – Optimism Bias. This has been evaluated at each stage of the project to ensure that the allowance for Optimism Bias reflects the level of detail of design and the wider context of the project.

## **APPENDIX D: APPROACH TO SECURING VALUE FOR MONEY FROM PROCUREMENT**

293. The adopted procurement strategy is core to securing value for money. To optimise the opportunity for a range of contractors to become involved in the delivery of this important project, three contracts will be awarded. These are:

- The Principal Contract, which covers the new crossing and approach roads, including associated ITS installation.
- Junction 1a, for the delivery of improvements to the M9, Junction 1a and the M9 spur, including associated ITS.
- Fife ITS, covering the installation of ITS on the present M90 between Halbeath Interchange and the Northern Approach Road.

294. Of these, the first is substantially the largest and securing value for money on this contract is pivotal to the successful delivery of the project.

295. Our approach provides for a lump sum design and build contract between the Scottish Ministers and the chosen Contractor, and for the Contractor to be selected by tender competition.

296. It will be the responsibility of the Scottish Ministers to secure the statutory powers to construct the works and the land to be made available for the contract, as well as to make due payment to the Contractor for the work done as it progresses. The Contractor will be responsible for the design and construction, health and safety, consents required outwith the Bill and any defects arising over a five year period after completion.

297. The information provided to the Contractor by the Scottish Ministers to support the design and construction responsibilities will not be warranted and the Contractor will need to undertake sufficient due diligence during the tendering period. Certain risks will be shared. Because of the long duration of the contract, Scottish Ministers will carry the responsibility for a major proportion of price inflation cost, but increases will be identified by and based on the movement of published indices. Additional costs arising from encountering and dealing with unforeseen ground conditions and statutory undertakers' utility works will fall to the Contractor, although delays so caused will be taken into account by the Scottish Ministers and late completion damages otherwise payable by the Contractor will be mitigated if the Contractor has applied best endeavours to mitigate delay.

298. These conditions were itemised in greater detail in the Prospectus and Prequalification Questionnaire issued to prospective tenderers in June 2009, following a number of bi-lateral meetings with leading construction companies. These terms and conditions are rigorous but create a climate in which the Contractor is required to consider carefully the risks involved in the contract before submitting a tender, and managing the outcome of those risks which materialise during the construction process. This level of responsibility can only be placed on the most competent and experienced contractors who are confident in their capabilities of assessing and carrying risk after being given adequate opportunity to conduct their own due diligence of reported site conditions prior to bidding. This approach is considered by the industry as significantly more onerous than contract forms used by other employers but the experience of

Transport Scotland is that such contracts are effective in incentivising the efficient and effective resolution of unexpected events and providing good cost control.

299. In order to allow tenderers to be able to concentrate on the construction risks, risks associated with bidding process will be supported by the Scottish Ministers. This will be through a capped £5m contribution to 50% of the unsuccessful tenderer's cost. Provision for the £5m has been included within the costs as expressed in Table 1a for the North and South Network Connections and the Bridge. A capped reimbursement of participants accrued costs will also be made should the Bill process fail and Contingent Liability for this was approved by the Finance Committee on 22 September 2009.

300. As part of the risk management strategy, insurance is also normally provided for civil engineering contracts to cover any damage to the works. In this case consideration is being given to the use of an insurance policy that is placed by or on the instructions of the Scottish Ministers and which will make payment promptly in the event of damage to the works to allow remedial action to be taken, but which will preclude the insurer from attempting to recover the costs from other members of the supply chain who were party to the supply or construction of the damaged works. In addition to providing greater confidence to the contractor and supply chain to manage the rigorous contract form, this approach could also reduce costs involved in the provision of a multiplicity of insurance policies by individual participants. Bonds may also be secured to safeguard payments made by the Scottish Ministers until the contract is complete.

301. The intention, subject to Parliamentary approval of the Bill is to award the principal contract in April 2011. The procurement process for the second and third contracts will be initiated in summer 2009, so that benefits associated with the early delivery of these shorter contracts can be secured. These smaller works will also be procured through lump sum contracts and should be awarded in 2011<sup>34</sup>.

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<sup>34</sup> See Procurement Process and Programme pg 34-44 of the Policy Memorandum for more information.



## **HERITABLE INTERESTS STATEMENT**

### **INTRODUCTION**

302. This document relates to the Forth Crossing Bill introduced in the Scottish Parliament on 16 November 2009. It has been prepared by the Scottish Government to satisfy Rule 9C.3.2(h) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament.

303. The Bill contains provisions which will affect heritable property. Therefore, as required by Rule 9C.3.2(h)(i) of the Parliament's Standing Orders, this Statement sets out details of the notification of the proposed Bill given to those persons entitled to receive notice in respect of heritable property affected by the Bill and of the methodology used to identify those persons. In addition, the Statement sets out details of how the Scottish Ministers' intention to introduce the Bill was advertised (see Rule 9C.3.2 (h)(ii)) and the premises where the Bill and its accompanying documents may be inspected (see Rule 9C.3.2(h)(iii) and 9C.4.2) and reproduces the undertakings to distribute certain documents and to pay costs required to be given under Rule 9C.3.2(h)(iii) and (iv).

### **NOTIFICATION OF PERSONS WITH AN INTEREST IN HERITABLE PROPERTY**

304. A heritable property is defined as "real" or "immovable" property. It consists of land and anything (including buildings) attached to the land such as trees and crops. In this Statement we have included those whose heritable interests are directly affected by acquisition or servitudes and those whose property abuts the project works.

305. The persons having an interest in heritable property that will be subject to compulsory purchase or use are named in the Book of Reference. Notice of the proposal to introduce a Bill containing compulsory purchase powers was given by means of a letter dated 13 November 2009 to each of the persons named in the Book of Reference. Four standard forms of letter were used to cater for different circumstances (outright acquisition of land within the limits of deviation, outright acquisition of land within the limits of land to be acquired or used, acquisition of permanent rights and acquisition of temporary rights), so that every recipient received a letter in a form which was relevant to them. In addition to the relevant letter, recipients also received a copy of the appropriate land interest plan, an extract of the relevant entry in the Book of Reference, a copy of the non-technical summary of the Environmental Statement and a copy of the leaflet "Hybrid Bills – The proposed Forth Crossing Bill" which was produced by the Parliament earlier this year. The texts of these four forms of letter are set out as Appendices 3 to 6 to this Statement.

306. The persons having an interest in heritable property that may be otherwise affected by the Bill but which is not within the categories covered by Appendices 3 to 6 have been separately identified. They consist of persons with an interest in land abutting the route i.e. sharing a common boundary with the land subject to compulsory purchase or use. Notice of the intention to introduce a Bill was given by means of a notification dated 13 November 2009, along with a copy of the non-technical summary of the Environmental Statement to each of these persons. A copy of that notification is provided as Appendix 7.

307. A person having several interests in land within any of the categories covered by Appendices 3 to 6 received all the letters applicable to the land in question. Where such a person also owned land within the category covered by Appendix 7, a separate notification was not sent. That is because the Appendix 7 letter only alerts the recipient to the fact that the Bill is being promoted, and those in receipt of letters in the form of Appendices 3 to 6 would already have been advised of this.

308. Where a person has a right in common property, the notice (see Appendices 3 to 6) issued to that person included an additional statement in the following terms:

“Common property is property which is owned by more than one person. In a housing development the developer or local authority who builds the houses sometimes provides in the title to each house that the owner of the house will own a share of landscaped areas, play areas, open spaces, roads, paths, and other land in the development. That shared land is common property which is usually maintained by the local authority or an appointed factor.

According to our records you own or occupy a title to land which includes landscaped areas, open spaces or other land which is common property.

Some of that common property land is affected by the proposed Forth Replacement Crossing project.”

309. All notices were posted by first class pre-paid Recorded Delivery post on 13 November 2009.

310. A detailed statement of the referencing methodology employed can be located within Appendix 1 and the criteria for identifying heritable property affected by the Bill is set out in Appendix 2.

#### **ADVERTISEMENT OF INTENTION TO INTRODUCE BILL AND PREMISES WHERE DOCUMENTS AVAILABLE**

311. Notice of the intention to introduce the Bill during week commencing 16 November 2009 was published in The Scotsman and the Courier on Monday 2 and 9 November 2009, The Edinburgh Gazette on Tuesday 3 and 10 November 2009, the West Lothian Courier on Thursday 5 and 12 November 2009 and in the Queensferry Gazette on Friday 6 and 13 November 2009 in accordance with Rule 9C.3.2(h)(ii). The text of the notice is reproduced at Appendix 9. The notice has also been displayed, since Monday 2 November 2009, in the following Scottish Parliament Partner Libraries (as instructed by the Scottish Parliament):

- Alloa Library, 26-28 Drysdale Street, Alloa, FK10 1JL
- AK Bell Library, York Place, Perth, PH2 8EP
- Blackhall Library, 56 Hillhouse Road, Edinburgh, EH4 5EG
- Carmondean Library, Carmondean Centre, Livingston, EH54 8PT
- Central Library, George IV Bridge, Edinburgh, EH1 1EG
- Central Library, Corn Exchange Road, Stirling, FK8 2HX

*These documents relate to the Forth Crossing Bill (SP Bill 33) as introduced in the Scottish Parliament on 16 November 2009*

- Dalgety Bay Library, Regents Way, Dalgety Bay, Dunfermline, KY11 9UY
- Dalkeith Library, White Hart Street, Dalkeith, EH22 1AE
- Dunfermline Central Library, 1 Abbot Street, Dunfermline , KY12 7NL
- Forfar Library, 50-56 West High Street, Forfar, DD8 1BA
- Glenwood Library, Glenwood Shopping Centre, Glenrothes, KY6 1PA
- Kirkcaldy Central Library, War Memorial Gardens, Kirkcaldy, KY1 1YG
- Leith Library, 28-30 Ferry Road, Edinburgh, EH6 4AE
- Linlithgow Library, The Vennel, Linlithgow, EH49 7EX
- Morningside Library, 184 Morningside Road, Edinburgh, EH10 4PU
- Portobello Library, 14 Rosefield Avenue, Edinburgh, EH15 1AU
- South Queensferry Library, 9 Shore Road, South Queensferry, EH30 9RD
- St Andrews Library, Church Square, St Andrews, KY12 9NN
- Wester Hailes Library, 1 West Side Plaza, Edinburgh, EH14 2FT

312. All households and premises within the area of the scheme received, during week commencing 9 November, notification, by means of a leaflet, of the introduction of the Bill. The notification also included details of where Bill documentation could be obtained or accessed, as well as information regarding the objection procedure.

313. From the day after the introduction of the Bill, the Bill and accompanying documents will be available on the Parliament's website [www.scottish.parliament.uk](http://www.scottish.parliament.uk), (go to "Parliamentary Business", then "Bills", then click on "Current Bills") and on the Forth Replacement Crossing project website [www.forthreplacementcrossing.info](http://www.forthreplacementcrossing.info)

314. Copies of the Bill and its accompanying documents will also be made available in the Scottish Parliament Partner Libraries, as listed above, from Tuesday 17 November 2009. In addition to the Partner Library locations, copies of the Bill and its accompanying documents will also be available for inspection from Tuesday 17 November 2009 at:

- North Queensferry Community Centre, Brock Street, North Queensferry, Inverkeithing, KY11 1JD
- Kirkliston Library, 16 Station Road, Kirkliston, EH29 9BE
- Transport Scotland Offices, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF
- Scottish Government, Information Management Unit Library Services, F Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD (by appointment only, on 0131 244 4556)

315. Following the Bill's introduction to the Scottish Parliament, public exhibitions will be held at the following venues and times:

- Holyrood Hotel, 81 Holyrood Road, Edinburgh, EH8 8AU – 18 & 19 November 10:00 to 20:00 hours
- Orocco Pier, 17 High Street, South Queensferry, EH30 9PP – 23, 24 & 26 November 10:30 to 20:30 hours
- Queensferry Hotel Business Centre, St Margaret’s Head, North Queensferry, KY11 1HP – 27 & 30 November, 1 December 10:30 to 20:30 hours and 28 November 10:00 to 17:00 hours
- Kirkliston Community Centre, 16-18 Queensferry Road, Kirkliston, EH29 9AQ – 3 & 4 December 10:30 to 20:30 hours and 5 December 10:00 to 17:00 hours.

## **SCOTTISH MINISTERS’ UNDERTAKINGS**

316. On 13 November 2009, in accordance with Rules 9C.3.2(h)(iii) and (iv), Frazer Henderson, a member of staff of the Scottish Ministers, made the following statements on behalf of the Scottish Ministers:

“We, the Scottish Ministers, hereby undertake to send copies of the documents required by Rule 9C.3.2 of the Parliament’s Standing Orders to accompany the Forth Crossing Bill to the premises listed in the Heritable Interests Statement in accordance with paragraph (h)(iii) of that Rule.”

“We, the Scottish Ministers, hereby undertake to pay any costs that may be incurred by the Scottish Parliamentary Corporate Body during the passage of the Forth Crossing Bill in respect of the matters determined by that Body under Rule 9C.3.2(h)(iv) of the Parliament’s Standing Orders.”

## **APPENDIX 1: LAND REFERENCING METHODOLOGY AND SERVICE OF NOTIFICATION**

317. This Appendix sets out the methodology that has been used by the Scottish Ministers in identifying persons entitled to receive notice in respect of heritable property affected by the Bill.

318. Professional land referencers and consultants were employed to identify persons with interests in property identified as affected heritable property. The criteria for determining whether a heritable property is an affected property for the purposes of the Bill is discussed in Appendix 2.

319. Throughout the identification of persons with interests in the property identified as heritable property, there has been close consultation between Transport Scotland’s professional land searchers, Scottish Government Legal Directorate (SGLD), Jacobs Arup (Consultant Project Engineers), and DLA Piper (Legal Consultants for Land Identification).

### **Identification of heritable interest and notification**

320. The purpose of the identification was to:

- identify all those with interests as owner or reputed owner, lessee or reputed lessee, or occupier in each of the categories of affected heritable property as detailed in paragraph 365; and
- record the type or types of notification to which each identified person was entitled.

321. The type of notification to be given in each case depended upon the Bill's proposals in relation to that property. The following categories of heritable property have been identified as being affected or potentially affected by the Bill.

**Heritable property situated within the limits of deviation (LOD) or limits of land to be acquired or used (LLAU):** this property will be subject to some level of compulsory acquisition or use i.e. one or more of the following:

- permanent outright acquisition
- acquisition of rights over the property (permanent or temporary)

Each notification relating to this land specified the land to which it related and the intended level of acquisition or use. The notifications also gave details of where the Bill and accompanying documents could be inspected or obtained and information regarding the objection procedure.

**Heritable property abutting LOD or LLAU:** this property is not directly affected by the works to be authorised by the Bill but has been identified as potentially affected more than property in general outside the Bill limits (LOD or LLAU). The notification relating to this land accordingly alerted recipients to the intention to promote the Bill. Like the other notifications, it also gave details of where the Bill and accompanying documents could be inspected or obtained and information regarding the objection procedure.

### **Land referencing methodology**

322. The investigations, detailed below, were undertaken to ensure the correct and complete identification of all those with interests in property identified as being affected heritable property.

#### *Site identification – February 2008*

323. Ordnance Survey (OS) maps were obtained for the areas potentially affected by the Forth Crossing works. The OS maps were used to define areas of affected land, then plans were drawn up by Jacobs Arup within which individual title enquiries or searches were undertaken by Transport Scotland searchers to establish ownership, lessee or occupier details.

#### *Written enquiries, door-to-door enquiries and completion of questionnaires*

324. Starting in February 2008 through to June 2008, written enquiries were made of major landowners and occupiers, statutory undertakers (Scottish Gas, Scottish Power, Scottish Water etc.), local authorities (Fife Council, The City of Edinburgh Council and West Lothian Council) and other institutions and bodies such as the Crown Estates and Ministry of Defence to identify their respective property interests.

325. Door-to-door enquiries were undertaken by Jacobs Arup, and all those willing to be interviewed were asked to identify their property interests and to provide any further details (i.e. copies of title deeds, changes in ownership etc.) of which they were aware. Information was recorded on questionnaires or meeting notes. Where persons were unavailable, information was left or posted and the occupiers of the property were requested to contact Transport Scotland.

326. Enquiries were also made by both Transport Scotland and Jacobs Arup of land agents, other property owners in the vicinity, property managers, solicitors and anyone else who could be identified as possibly knowing about any property and being willing to share that knowledge:

- Transport Scotland and Jacobs Arup staff responsible for land identification completed land interest questionnaires reflecting the information provided by owners and occupiers.
- repeat visits were made to properties where there was no response to an earlier visit or to a questionnaire left or posted.
- at subsequent meetings with landowners, occupiers or agents throughout 2008 and 2009, confirmation was sought regarding the information provided during previous enquiries.

#### *Title searches*

327. Searches continued until a picture of land ownership along the route had been built up. Searches have been carried out in respect of the land to be acquired and adjacent land in the following registers:

- the Register of Sasines (Computerised Presentment Book)
- the Land Register (Application Record)
- Companies House (Companies Register)

328. Transport Scotland searchers also examined historical Ordnance Survey data (when required) and further requests were made to statutory undertakers to provide details of their interests.

329. All the information obtained was entered on a database as it came to hand enabling Jacobs Arup to record owners, lessees and occupiers by reference to numbered land ownership areas. These areas reflected land ownership on the ground. Titles were mapped by Jacobs Arup and title mapping was checked by searchers to enable a Composite Title Plan to be produced.

330. On the draft Parliamentary plans, individual plots were identified using the Composite Title Plan and information obtained regarding lessees or occupiers. The plots were numbered by reference to the smallest unit of ownership. Thus if, for example, where a track runs through land and someone other than the landowner has a right of access over the track, the plans were amended to show two plots, one being the area occupied by the track with both the landowner and the other party recorded in respect of their respective interests; and the other plot showing only the landowner's interest.

*Examination of titles*

331. DLA Piper examined the titles identified and provided by Transport Scotland searchers as relating to “lesser” interests in the land, such as servitudes for access or utilities or other registered or recorded rights enforceable over the land identified, with a view to identifying the properties which benefited from such rights. This allowed Transport Scotland searchers to carry out a check of all the relevant Registers to identify the current owner of these benefited properties. Where appropriate, DLA Piper requested additional titles to be provided by the searchers to enable them to carry out this exercise comprehensively.

*Confirmation schedules*

332. Confirmation Schedules, which included plans showing land plots and a table providing details of the interest held on the database were sent on 28 August 2009 to all owners, lessees, occupiers and affected parties who had been identified.

333. The Schedules contained a “return sheet” for each party to complete confirming that the name and address of that party was correct and that the ownership/occupation/leasehold interests were as shown in the table. There was also a space for providing corrections or additional information. A copy of the letter and its schedule can be found at Appendix 8.

*Confirmation schedule response*

334. All responses to Confirmation Schedules, returned to Transport Scotland, as requested, by 11 September 2009, were logged (including those who contacted Transport Scotland or Jacobs Arup direct). Late receipts, up to and including 6 November, were also logged. Any telephone calls providing information in lieu of a confirmation schedule or in addition to information supplied was also documented and incorporated with a composite list referred to below.

335. A composite list of each query or comment (with contact details) or corrected information was given to Jacobs Arup who dealt with queries as appropriate either by correcting ownership or other details in the database, or by contacting Solicitors or Agents as requested to confirm the contents of title. Where the extents of ownership shown on the plans provided with the Confirmation Schedule were queried, details of the query were passed to Transport Scotland’s searchers who reviewed previously obtained title information or obtained additional titles from the Registers of Scotland, as appropriate, to clarify ownership details.

336. Any queries relating to the design of the proposed works or practical engineering questions were referred to Jacobs Arup or to Transport Scotland.

*Further visits*

337. Further visits by Jacobs Arup to the route of the proposed works were carried out prior to the notifications detailed in paragraph 305 so as to enable any changes or developments on the land (such as new development sites) to be noted. These visits ensured that information first ascertained some time previously was updated thus ensuring that the Book of Reference contains the most recent information available, in accordance with the Standing Orders.

### *Final update searches*

338. Transport Scotland Searchers carried out a final check on 28 and 29 October 2009, in all the relevant Registers to ensure that any dispositions since the last update were identified, so far as possible, and that recent purchasers were included in the notification process.

339. Updated searches were carried out in all the relevant registers where any significant change was noted as a consequence of the final site visits.

### **Completion of database and comparison with the Parliamentary plans**

340. The information with regard to owners provided by searchers together with the information ascertained from door to door enquiries, questionnaires, other parties and confirmation schedules was incorporated within a database of names of owners, lessees and occupiers indexed by reference to numbered areas of land.

341. The database was continually updated, based on the searches and enquiries carried out, and, where appropriate, plot boundaries were amended to reflect different extents of ownership, leasehold or occupation.

342. The information contained in the database recorded the type of interest of each identified party as owner, occupier or lessee.

343. The database also recorded any restricted interest such as a common interest, right of access or drainage right which was identified.

344. The database recorded the plot purpose so that the proposed use of each plot and each party with an interest or affected by that plot could be identified.

### **Final review**

345. At the final review of the Parliamentary plans, attended by representatives of Transport Scotland, Jacobs Arup and DLA Piper, a plot by plot cross check was made of the numbered plots as shown on the Parliamentary plans, Bill schedules and Book of Reference to establish that:

- none of the plots had been missed
- the categories of land take/use were correctly identified.

### **Approach**

346. During the land referencing period and continuing into the objection period, a reactive and flexible approach to notification has been and will be taken involving reserving notices and serving fresh notices in response to information received.



347. Throughout the process Transport Scotland and Jacobs Arup shared with the searchers any information concerning land ownership or occupation of which they became aware during their work.

348. In dealing with responses to the Confirmation Schedules and when queries have been received from members of the public at any time during the referencing procedure, all reasonable steps have been taken to ensure that queries or requests for information were dealt with as quickly and effectively as possible.

349. Jacobs Arup and Transport Scotland searchers, as the referencing team for this project are aware that the Waverley Railway (Scotland) Bill Committee recommended that the searchers' methodology for searching public registers be reviewed by Registers of Scotland. Transport Scotland's searchers, who are professional searchers of public registers, have been trained by Registers of Scotland.

### **Compilation of the Book of Reference**

350. The Standing Orders require the compilation of a Book of Reference relating to land within the Act limits (as defined in section 78 to the Bill). The appropriate information was extracted from the database and produced in Book of Reference format as required by the Presiding Officer's Determination on "Proper Form" of Hybrid Bills.

### **Service of notification**

351. Using the formats set out in the Presiding Officer's Determination on "Proper Form" of Hybrid Bills, individual notifications were generated using the database. As part of that exercise, relevant extracts from the Parliamentary plans were annexed to the notifications relating to land within the Act limits. In addition, those parties with heritable rights in properties that immediately abut the Act limits of the scheme received notification of the Bill's introduction.

352. Notifications were posted by prepaid first class Recorded Delivery service. Proof of posting was obtained by way of postal lists received by the Royal Mail.

353. Use was made of the Royal Mail's "track and trace" service whereby the status of any letter can be traced. Receipts are taken at the point of delivery and copies are available on payment. The Royal Mail were paid to provide copies of all receipts so obtained.

354. Any letters returned as undelivered will be checked and if correct names and/or addresses can be ascertained, the notices will be re-served by Recorded Delivery.

355. Where letters are returned by the Royal Mail marked as "not called for", or where letters appeared to have gone astray or where the Royal Mail can not provide a receipt, the letters will be re-served by hand delivery by teams of two representatives from Jacobs Arup and the delivery witnessed. A record will be kept of each such delivery with signatures of the two representatives of Jacobs Arup being retained as evidence of hand delivery. Where personal delivery can not be effected (for example, where there is no letter box), the letter will be retained by Jacobs Arup and a record kept of the reason for its retention.

356. A general notification was also issued during the week of 9 November 2009, to all homes and businesses within the study area of the scheme. The notice alerted recipients of the intention to promote the Bill and like the other notifications, it also gave details of where the Bill and accompanying documents could be inspected or obtained and information regarding the objection procedure. A copy of the text of the leaflet is provided as Appendix 10.

## **APPENDIX 2: CRITERIA FOR IDENTIFYING HERITABLE PROPERTY AFFECTED BY THE BILL**

357. The Standing Orders require notification to be given in respect of heritable property affected by a Hybrid Bill, but do not give any guidance as to what is meant by “affected”. As a result, the Scottish Ministers have to decide what is appropriate.

358. There can be no definitive “right” or “wrong” method for deciding which heritable property is affected and what is the significance in this context of the limits of deviation (“LOD”) and the limits of land to be acquired or used (“LLAU”). Whatever the method is, it is considered that it is essential that the methodology adopted should satisfy a judicial review. The approach must, therefore, be consistent, reasonable and not arbitrary with no element of subjectivity.

359. On this basis, the approach taken has been to treat the following as affected heritable property:

- heritable property within LOD/LLAU.
- heritable property abutting LOD/LLAU.

360. The list of registers in the Presiding Officer’s Determination has been treated as an information source and not as a definitive list.

361. The Standing Orders of the Scottish Parliament and the Presiding Officer’s Determinations include requirements concerning the notification to be given to persons having an interest in heritable property affected by a Hybrid Bill. The relevant provision is Rule 9C.3.2(h)(i) which provides that one of the matters to be included in a Statement is:

“in the case of a Bill which contains provisions which will affect heritable property, details of the notification of the proposed Hybrid Bill given by the Scottish Ministers to such persons or classes of person having an interest in heritable property affected by the Bill as the Presiding Officer may determine;”

362. The starting point, therefore, is to identify what heritable property ought to be treated as being affected by the Bill. Only then can identification of the persons to be notified as being interested in that property progress.

### **Which categories of properties are “affected”?**

363. Unlike notice requirements under other similar procedures (such as notification under Roads Orders), the Standing Orders neither define nor give any guidance as to the meaning of

“affected” for the purposes of Rule 9C.3.2(h)(i). The onus is placed on the Scottish Ministers to identify which categories of heritable property are to be treated as “affected” by the Bill.

364. The range of heritable property which might potentially be “affected” by a Bill’s provisions is incapable of definition. Different types of property might be affected in one way or another to a greater or lesser degree. However, it seems reasonable to assume that the public advertisement of the Bill (also required by Rule 9C.3.2(h)(ii)) is intended for the public at large. It would follow that the intention of Rule 9C.3.2(h)(i) is to ensure that individual notices are given to owners of heritable property that is affected in a way that is special to that property i.e. affected in a way that other property in general is not. On that reasoning, it is necessary to identify heritable property that would, be “specially affected” by the provisions of the Bill.

### **Affected heritable property**

#### *Heritable property within LOD/LLAU*

365. In past promotions<sup>35</sup> a distinction has been drawn between heritable property within LOD or LLAU on the one hand and other affected heritable property on the other. It is apparent that Rule 9C.3.2(h)(i) does not in fact draw this distinction. Heritable property within LOD or LLAU must by virtue of being subject to compulsory powers be specially affected. It will therefore be “affected” for the purposes of the Rule.

#### *Heritable property abutting LOD/LLAU*

366. Heritable property immediately adjoining land on which works are to be authorised is not necessarily specially affected by the proposed works. However, it is important that those whose property abuts the project works are included in the definition of “affected” as they are affected differently from the general population by the physical attachment of their interests to the proposed works.

### **Persons entitled to be notified**

367. The Presiding Officer’s Determination set out who are the persons or classes of persons who should be given notice in respect of affected heritable property. These are persons who (see Rule 9C.3.2(h)(i)) have an interest in the property.

368. The Scottish Ministers have therefore defined and accordingly notified persons as follows:

- all of those listed in the Book of Reference where their land or properties lie within the limits of deviation and will be acquired compulsorily
- all of those listed in the Book of Reference where their land or properties lie within the limits of land to be acquired or used and will be acquired compulsorily
- all of those whose have heritable rights in properties that abut the limits of the scheme

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<sup>35</sup> Private Bills of the Scottish Parliament.

369. The Scottish Ministers have also taken steps, by issuing a notification to every household and premises within the study area, to ensure that any person within the vicinity of the works is notified of the works and how they might make representations as to their interests.

### **APPENDIX 3: FORM OF LETTER SENT IN CASES OF OUTRIGHT ACQUISITION OF LAND WITHIN THE LIMITS OF DEVIATION**

**IF YOU ARE IN DOUBT ABOUT THE POSSIBLE EFFECT OF THIS LETTER YOU SHOULD SEEK LEGAL ADVICE AS SOON AS POSSIBLE.**

#### **FORTH CROSSING BILL**

#### **NOTICE OF PROPOSAL TO ACQUIRE LAND COMPULSORILY**

*To [Name]*

*[Address]*

[A] The purpose of this letter is to inform you that the Scottish Ministers intend to introduce a Hybrid Bill, the Forth Crossing Bill, into the Scottish Parliament on or around 16 November 2009, and of the procedures involved should you wish to seek further information regarding the Bill, the parliamentary process to which it will be subject, or how to lodge an objection.

[B] The purpose of the Bill is to give the Scottish Ministers power to construct a new bridge over the Firth of Forth and to construct and improve associated roads and structures; to authorise the acquisition, or temporary possession and use, of land for construction and improvement works.

[C] We understand that you have an interest in the land as described in the schedule to this letter. If the Bill is passed by the Parliament, you may be obliged to sell the land, or lose your right to use it. This means that ownership of the land described in the schedule could be taken from you. You may be entitled to compensation from the Scottish Ministers if you are obliged to sell the land or the Scottish Ministers gain a right to use it.

[D] The Bill provides for the acquisition of [land] [rights in land and rights to use land] as described in the schedule to this letter and shown on the extract from the Bill plans attached to the schedule (**Should you require further information or have any questions about the area of land referred to (e.g. identifying precise location, intended use), please contact Forth Replacement Crossing Land Manager, Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF, tel: 0141 272 7578.**

[E] The day after the Bill is introduced in the Parliament, it will be published by the Parliament together with the following accompanying documents—

- Explanatory Notes
- Policy Memorandum
- Financial Memorandum
- Heritable Interests Statement

*These documents relate to the Forth Crossing Bill (SP Bill 33) as introduced in the Scottish Parliament on 16 November 2009*

- Statement by the Presiding Officer of the Parliament on the legislative competence of the Bill

[F] The day after introduction, the Bill and the above documents will be available, free of charge, on the Parliament's website [www.scottish.parliament.uk](http://www.scottish.parliament.uk), (go to "Parliamentary Business", then "Bills", then click on "Current Bills"). In addition, copies of the Bill and its accompanying documents (including a Book of Reference, maps, plans and sections, Environmental Statement and a non-technical summary of the Environmental Statement, that have been prepared by the Scottish Ministers), will be available for inspection at the following Parliament partner libraries—

- Alloa Library, 26-28 Drysdale Street, Alloa, FK10 1JL
- AK Bell Library, York Place, Perth, PH2 8EP
- Blackhall Library, 56 Hillhouse Road, Edinburgh, EH4 5EG
- Carmondean Library, Carmondean Centre, Livingston, EH54 8PT
- Central Library, George IV Bridge, Edinburgh, EH1 1EG
- Central Library, Corn Exchange Road, Stirling, FK8 2HX
- Dalgety Bay Library, Regents Way, Dalgety Bay, Dunfermline, KY11 9UY
- Dalkeith Library, White Hart Street, Dalkeith, EH22 1AE
- Dunfermline Central Library, 1 Abbot Street, Dunfermline, KY12 7NL
- Forfar Library, 50-56 West High Street, Forfar, DD8 1BA
- Glenwood Library, Glenwood Shopping Centre, Glenrothes, KY6 1PA
- Kirkcaldy Central Library, War Memorial Gardens, Kirkcaldy, KY1 1YG
- Leith Library, 28-30 Ferry Road, Edinburgh, EH6 4AE
- Linlithgow Library, The Vennel, Linlithgow, EH49 7EX
- Morningside Library, 184 Morningside Road, Edinburgh, EH10 4PU
- Portobello Library, 14 Rosefield Avenue, Edinburgh, EH15 1AU
- St Andrews Library, Church Square, St Andrews, KY12 9NN
- South Queensferry Library, 9 Shore Road, South Queensferry, EH30 9RD
- Wester Hailes Library, 1 West Side Plaza, Edinburgh, EH14 2FT

In addition to the above copies of the Bill and its accompanying documents will also be available for inspection from Tuesday 17 November 2009 at:

- North Queensferry Community Centre, Brock Street, North Queensferry, Inverkeithing, KY11 1JD
- Kirkliston Library, 16 Station Road, Kirkliston, EH29 9BE
- Transport Scotland Offices, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF

*These documents relate to the Forth Crossing Bill (SP Bill 33) as introduced in the Scottish Parliament on 16 November 2009*

- Scottish Government, IMU Library Services, F Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD (by appointment on: 01312444556)

Following the Bill's introduction to the Scottish Parliament, public exhibitions will be held at the following venues and times:

- Holyrood Hotel, 81 Holyrood Road, Edinburgh, EH8 8AU – 18 & 19 November 10:00 to 20:00 hours
- Orocco Pier, 17 High Street, South Queensferry, EH30 9PP – 23, 24 & 26 November 10:30 to 20:30 hours
- Queensferry Hotel Business Centre, St Margaret's Head, North Queensferry, KY11 1HP – 27 & 30 November & 1 December 10:30 to 20:30 hours and 28 November 10:00 to 17:00 hours and
- Kirkliston Community Centre, 16-18 Queensferry Road, Kirkliston, EH29 9AQ – 3 & 4 December 10:30 to 20:30 hours and 5 December 10:00 to 17:00 hours.

Copies of the Bill, and those accompanying documents published by the Parliament, will be available for sale from any Blackwell's bookshop and will also be available on the Parliament's website ([www.scottish.parliament.uk](http://www.scottish.parliament.uk)). Copies of the other accompanying documents (shown below) will be available on the project website ([www.forthreplacementcrossing.info](http://www.forthreplacementcrossing.info)) or for sale from the Forth Replacement Crossing Project Team, Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow G4 0HF, Tele: 0141 272 7578 or e-mail: [frcenquiries@transportscotland.gsi.gov.uk](mailto:frcenquiries@transportscotland.gsi.gov.uk).

**The prices of the documents are:**

Environmental statement	£ 500.00 plus VAT
Non-technical summary of the environmental statement	FREE
Code of Construction Practice (CoCP)	FREE
Noise and Vibration Policy Statement	FREE
Map, plans and sections - A1 size	£ 325.00 plus VAT
Location Plans	£ 25.00 each plus VAT (£125 per set)
Land Plans	£ 6.10 each plus VAT (£190 per set)
Works Plans	£ 0.31 each plus VAT (£10 per set)
Book of reference	£ 40.00 plus VAT

The environmental statement will also be available on DVD. There will be a charge of £10.00 for this. Cheques should be made payable to Transport Scotland.

[<sup>36</sup> The Bill seeks to supersede section 90 of the Lands Clauses Consolidation (Scotland) Act 1845, and substitute for it a provision restricting the power of acquiring compulsorily a part only of a—

- (a) house or building to cases where the part can be taken without material detriment to the house or building; and
- (b) park or garden belonging to a house to cases where the part can be taken without seriously affecting the amenity or convenience of the house.]

Once the Bill has been introduced, it will be subject to a three Stage process where it will be considered in detail both by a specially-established Hybrid Bill Committee and by the full Parliament.

Should you wish to object to the Bill, you will have 60 days to do so. The objection period commences the day after the Bill is introduced and ends at 5.00 pm on the sixtieth day thereafter (certain days may not count in the 60 day period and the deadline for objections will be confirmed by the Parliament on the Bill's introduction). Objections must be lodged with the Hybrid Bills Unit, The Scottish Parliament, Edinburgh, EH99 1SP (0131 348 6789, [hybrid.bills@scottish.parliament.uk](mailto:hybrid.bills@scottish.parliament.uk)). The enclosed leaflet gives information on the Hybrid Bill process and, in particular, the objection process.

A copy of the Parliament's *Guidance on Hybrid Bills*, which explains in greater detail the Hybrid Bill process, is available on the Parliament's website ([www.scottish.parliament.uk](http://www.scottish.parliament.uk), go to "Parliamentary Business" and then "Parliamentary Procedure").

If you wish to lodge an objection, you will require to conform to the admissibility criteria set out in the Parliament's Standing Orders (the rules of procedure). Objections are required to—

- be in English or Gaelic;
- be printed, typed or clearly hand-written;
- set out clearly the name, address and, where available, other contact details of the objector (telephone, e-mail and fax);
- be signed (where applicable by a person duly authorised and showing that person's position or designation) and dated;
- set out clearly the nature of the objection, i.e. why the objector opposes the Bill (for example, the proposed acquisition of an objector's property, or noise and vibration);
- explain whether the objection is to the whole Bill and/or specified provisions, in which case these should be clearly identified;
- specify how the objector's interests would be adversely affected by the Bill, for example because of anticipated loss of earnings, or reduction in property values, adverse impact on employment or business, loss of amenity etc.; and
- be accompanied by the lodging fee determined by the Scottish Parliamentary Corporate Body (currently £20.00).

---

<sup>36</sup> Note: The text relating to section 90 of the Lands Clauses Consolidation (Scotland) Act 1845 (c.19) was included within those letters addressed to owners from whom part only of a garden is to be acquired compulsorily; there being no person from whom a part of a house or building is to be acquired compulsorily.

It is important to emphasise **that an objection must state clearly whether it is against the whole Bill and/or specified provisions**. In either case **the objection must clearly show how the objector will be adversely affected by the provisions of the Bill**.

At the conclusion of the objection period, the clerks in the Hybrid Bills Unit will check all objections for admissibility. Once this has been done, a letter will be issued to each objector and a copy of each admissible objection will be made available for inspection in each of the above partner libraries and on to the Parliament's website. Should you not wish all, or any, of your contact details to be made available on the website, then you must inform the clerks of this at the time you are objecting. They will then delete this from the web version of that objection but not from the copies placed in the partner libraries for inspection (this version will be useful to objectors in identifying each other should they wish to enter into dialogue where there are objections of a similar nature).

For further details on the Hybrid Bill process and, in particular, the objection process, please contact the Hybrid Bills Unit (tel: 0131 348 5246, e-mail: [hybrid.bills@scottish.parliament.uk](mailto:hybrid.bills@scottish.parliament.uk)). For further details on the subject matter of the Bill please contact Frazer Henderson, Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF, tel: 0141 272 7578.

*Signed:*

*Date:*

#### **APPENDIX 4: FORM OF LETTER SENT IN CASES OF OUTRIGHT ACQUISITION OF LAND WITHIN THE LIMITS OF LAND TO BE ACQUIRED OR USED**

The text of this letter is identical to that in Appendix 3 save that:

- at point [D] there is included:  
“The schedule to this letter gives details of the rights in land and rights to use land.”

#### **APPENDIX 5: FORM OF LETTER SENT IN CASES OF ACQUISITION OF PERMANENT RIGHTS**

The text of this letter is identical to that in Appendix 3 save that:

- the heading is:  
**“NOTICE OF PROPOSAL TO ACQUIRE PERMANENT RIGHTS IN LAND COMPULSORILY”**
- the paragraph at point [C] reads:  
“We understand that you have an interest in the land as described in the schedule to this letter and shown on the attached extract or extracts from the Parliamentary plans. If the Bill is passed by the Parliament, you may be obliged to sell a right in your property, or a right to use it. This means that your interest in the land described in the schedule to this letter could be made subject to particular rights. You may be entitled to compensation from the promoter if this occurs.”
- at point [D] there is included:



“The schedule to this letter gives details of the rights in land and rights to use land.”

## **APPENDIX 6: FORM OF LETTER SENT IN CASES OF ACQUISITION OF TEMPORARY RIGHTS**

The text of this letter is identical to that in Appendix 3 save that:

- the heading is:  
**“NOTICE OF PROPOSAL TO ACQUIRE TEMPORARY RIGHTS IN LAND OR TEMPORARY POSSESSION OF LAND COMPULSORILY”**
- the paragraph at point [C] reads:  
“We understand that you have an interest in the land as described in the schedule to this letter and shown on the attached extract or extracts from the Parliamentary plans. If the Bill is passed by the Parliament, you may be obliged to sell a right in your property, or a right to use it. This means that your interest in the land described in the schedule to this letter could be made subject to particular rights. You may be entitled to compensation from the promoter if this occurs.”
- at point [D] there is included:  
“The schedule to this letter gives details of the temporary rights in land and temporary rights to use land.”

## **APPENDIX 7: FORM OF NOTIFICATION SENT IN RESPECT OF INTEREST IN AFFECTED LAND (NOT WITHIN APPENDICES 3, 4, 5 AND 6)**

### **NOTIFICATION OF A HYBRID BILL**

*To [Name]*

*[Address]*

### **FORTH CROSSING BILL**

The purpose of this letter is to inform you that the Scottish Ministers intend to introduce a Hybrid Bill, the Forth Crossing Bill into the Scottish Parliament on or around 16 November 2009, and of the procedures involved should you wish to seek further information regarding the Bill, the parliamentary process to which it will be subject, or how to lodge an objection to the Bill.

The purpose of the Bill is to give the Scottish Ministers power to construct a new bridge over the Firth of Forth and to construct and improve associated roads and structures; to authorise the acquisition, or temporary possession and use, of land for construction and improvement works.

The day after the Bill is introduced in the Parliament, it will be published by the Parliament together with the following accompanying documents—

- Explanatory Notes
- Policy Memorandum

*These documents relate to the Forth Crossing Bill (SP Bill 33) as introduced in the Scottish Parliament on 16 November 2009*

- Financial Memorandum
- Heritable Interests Statement
- Statement by the Presiding Officer of the Parliament on the legislative competence of the Bill

The day after introduction, the Bill and the above documents will be available on the Parliament's website [www.scottish.parliament.uk](http://www.scottish.parliament.uk), (go to "Parliamentary Business", then "Bills", then click on "Current Bills"). In addition, copies of the Bill and its accompanying documents (including a Book of Reference, maps, plans and sections, Environmental Statement and a non-technical summary of the Environmental Statement that have been prepared by the Scottish Government) will be available for inspection at the following Parliament partner libraries—

- Alloa Library, 26-28 Drysdale Street, Alloa, FK10 1JL
- AK Bell Library, York Place, Perth, PH2 8EP
- Blackhall Library, 56 Hillhouse Road, Edinburgh, EH4 5EG
- Carmondean Library, Carmondean Centre, Livingston, EH54 8PT
- Central Library, George IV Bridge, Edinburgh, EH1 1EG
- Central Library, Corn Exchange Road, Stirling, FK8 2HX
- Dalgety Bay Library, Regents Way, Dalgety Bay, Dunfermline, KY11 9UY
- Dalkeith Library, White Hart Street, Dalkeith, EH22 1AE
- Dunfermline Central Library, 1 Abbot Street, Dunfermline, KY12 7NL
- Forfar Library, 50-56 West High Street, Forfar, DD8 1BA
- Glenwood Library, Glenwood Shopping Centre, Glenrothes, KY6 1PA
- Kirkcaldy Central Library, War Memorial Gardens, Kirkcaldy, KY1 1YG
- Leith Library, 28-30 Ferry Road, Edinburgh, EH6 4AE
- Linlithgow Library, The Vennel, Linlithgow, EH49 7EX
- Morningside Library, 184 Morningside Road, Edinburgh, EH10 4PU
- Portobello Library, 14 Rosefield Avenue, Edinburgh, EH15 1AU
- St Andrews Library, Church Square, St Andrews, KY12 9NN
- South Queensferry Library, 9 Shore Road, South Queensferry, EH30 9RD
- Wester Hailes Library, 1 West Side Plaza, Edinburgh, EH14 2FT

In addition to the above copies of the Bill and its accompanying documents will also be available for inspection from Tuesday 17 November 2009 at:

- North Queensferry Community Centre, Brock Street, North Queensferry, Inverkeithing, KY11 1JD
- Kirkliston Library, 16 Station Road, Kirkliston, EH29 9BE

*These documents relate to the Forth Crossing Bill (SP Bill 33) as introduced in the Scottish Parliament on 16 November 2009*

- Transport Scotland Offices, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF
- Scottish Government, IMU Library Services, F Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD (by appointment on: 0131 244 4556)

Following the Bill's introduction to the Scottish Parliament, public exhibitions will be held at the following venues and times:

- Holyrood Hotel, 81 Holyrood Road, Edinburgh, EH8 8AU – 18 & 19 November 10:00 to 20:00 hours
- Orocco Pier, 17 High Street, South Queensferry, EH30 9PP – 23, 24 & 26 November 10:30 to 20:30 hours
- Queensferry Hotel Business Centre, St Margaret's Head, North Queensferry, KY11 1HP – 27 & 30 November & 1 December 10:30 to 20:30 hours and 28 November 10:00 to 17:00 hours and
- Kirkliston Community Centre, 16-18 Queensferry Road, Kirkliston, EH29 9AQ – 3 & 4 December 10:30 to 20:30 hours and 5 December 10:00 to 17:00 hours.

Copies of the Bill, and those accompanying documents published by the Parliament, will be available for sale from any Blackwell's bookshop and will also be available on the Parliament's website ([www.scottish.parliament.uk](http://www.scottish.parliament.uk)). Copies of the other accompanying documents (shown below) will be available on the project website ([www.forthreplacementcrossing.info](http://www.forthreplacementcrossing.info)) or for sale from the Forth Replacement Crossing Project Team, Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow G4 0HF, Tele: 0141 272 7578 or e-mail: [frequiries@transportscotland.gsi.gov.uk](mailto:frequiries@transportscotland.gsi.gov.uk).

**The prices of the documents are:**

Environmental statement	£ 500.00 plus VAT
Non-technical summary of the environmental statement	FREE
Code of Construction Practice (CoCP)	FREE
Noise and Vibration Policy Statement	FREE
Map, plans and sections - A1 size	£ 325.00 plus VAT
Location Plans	£ 25.00 each plus VAT (£125 per set)
Land Plans	£ 6.10 each plus VAT (£190 per set)
Works Plans	£ 0.31 each plus VAT (£10 per set)
Book of reference	£ 40.00 plus VAT

The environmental statement will also be available on DVD. There will be a charge of £10.00 for this. Cheques should be made payable to Transport Scotland.

Once the Bill has been introduced, it will be subject to a three Stage process where it will be considered in detail both by a specially-established Hybrid Bill Committee and by the full Parliament.

Should you wish to object to the Bill, you will have 60 days to do so. The objection period commences the day after the Bill is introduced and ends at 5.00 pm on the sixtieth day thereafter (certain days may not count in the 60 day period and the deadline for objections will be confirmed by the Parliament on the Bill's introduction). Objections must be lodged with the Hybrid Bills Unit, The Scottish Parliament, Edinburgh, EH99 1SP (tel: 0131 348 5246, e-mail: [hybrid.bills@scottish.parliament.uk](mailto:hybrid.bills@scottish.parliament.uk)).

A copy of the Parliament's *Guidance on Hybrid Bills*, which explains in greater detail the Hybrid Bill process, is available on the Parliament's website ([www.scottish.parliament.uk](http://www.scottish.parliament.uk), go to "Parliamentary Business" and then "Parliamentary Procedure").

If you wish to lodge an objection, you will require to conform to the admissibility criteria set out in the Parliament's Standing Orders (the rules of procedure). Objections are required to—

- be in English or Gaelic;
- be printed, typed or clearly hand-written;
- set out clearly the name, address and, where available, other contact details of the objector (telephone, e-mail and fax);
- be signed (where applicable by a person duly authorised and showing that person's position or designation) and dated;
- set out clearly the nature of the objection i.e. why the objector opposes the Bill, for example, the proposed acquisition of an objector's property, or noise and vibration;
- explain whether the objection is to the whole Bill and/or specified provisions in which case these should be clearly identified;
- specify how the objector's interests would be adversely affected by the Bill, for example because of anticipated loss of earnings, or reduction in property values, adverse impact on employment or business, loss of amenity etc.; and
- be accompanied by the lodging fee determined by the Scottish Parliamentary Corporate Body (currently £20.00).

It is important to emphasise **that an objection must state clearly whether it is against the whole Bill and/or specified provisions**. In either case **the objection must clearly show how the objector will be adversely affected by the provisions of the Bill**.

At the conclusion of the objection period, the clerks in the Hybrid Bills Unit will check all objections for admissibility. Once this has been done, a letter will be issued to each objector and a copy of each admissible objection will be made available for inspection in each of the above partner libraries and on the Parliament's website. Should you not wish all, or any, of your contact details to be made available on the website, then you must inform the clerks of this at the time you are objecting. They will then delete this from the web version of that objection but not from the copies placed in the partner libraries for inspection (this version will be useful to objectors in identifying each other should they wish to enter into dialogue where there are objections of a similar nature).

For further details on the Hybrid Bill process and, in particular, the objection process, please contact the Hybrid Bills Unit (tel: 0131 348 5246, e-mail: [hybrid.bills@scottish.parliament.uk](mailto:hybrid.bills@scottish.parliament.uk)). For further details on the subject matter of the Bill please contact Frazer Henderson, Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow G4 0HF, tel: 0141 272 7578.

*Signed:*

*Date:*

## **APPENDIX 8: FORM OF LETTER SENT FOR CONFIRMATION OF LAND INTERESTS**

*To [Name]*

*[Address]*

### **FORTH REPLACEMENT CROSSING (FRC) – CONFIRMATION OF LAND INTERESTS**

Authorisation for the Forth Replacement Crossing is to be sought through a parliamentary bill which is intended to be introduced to the Scottish Parliament later this year.

We are currently preparing maps showing land which the Scottish Ministers are seeking to acquire or land over which permanent or temporary rights are required for the project. The interests in land shown on the maps will also be detailed in a schedule, called the Book of Reference. To facilitate preparation of the maps and Book of Reference, we have undertaken various consultations with landowners and occupiers and have also referred to land ownership information held by Registers of Scotland. Our consultations and searches indicate that you own, lease or occupy land which is necessary for the proposed scheme.

We enclose a plan showing the area of land in which you have an interest that is necessary for the proposed scheme. This will be shown on the maps which will be submitted with the parliamentary bill. We also include as Annex A to this letter draft extracts from the Book of Reference which will also accompany the bill. The extract from the Book of Reference details whether your interest is as the owner, lessee or occupier of the land. The maps and Book of Reference also indicate whether land is to be acquired or whether permanent or temporary rights are to be acquired.

We would be grateful if you could indicate, by ticking the appropriate box in the Confirmation Schedule (Annex B), whether or not the details in the draft extract from the Book of Reference and the boundaries of the land in which you have an interest are correct. Confirmation is required, to establish:

- if the boundary of land in which you have an interest is shown correctly;
- if your interest as an owner, lessee or occupier is correct;
- if your interest in land is held by a company, trust or other organisation whether the details in the extract from the book of reference are correct;

*These documents relate to the Forth Crossing Bill (SP Bill 33) as introduced in the Scottish Parliament on 16 November 2009*

- if the correct spelling of your name and correct initials have been used. Please note we are required to include all initials and we would be grateful if you could confirm any errors or omissions in this regard; and
- if there are any other interests in the land which you are aware of that are not reflected in the extract from the book of reference.

If you consider that there are any errors in the maps or extracts enclosed, we would be grateful if you could advise of the correct information on the confirmation schedule. Similarly, if you are concerned that the land ownership boundaries shown are not correct we would be grateful if you could provide information to support this, such as a registered title number or a copy of a registered title.

We enclose a prepaid envelope to return the confirmation schedule and ask that the schedule be returned by 11 September 2009.

Should you have any queries regarding the above, please do not hesitate to contact the undersigned.

Thank you for your assistance.

Yours faithfully

**JAMIE KENNEDY**

Land and Procurement Manager

Enc (2).

**Annex A – Extracts from Book of Reference**

**Confirmation of Land Interests**

The extracts below relate to the plots shown on the accompanying Land Confirmation

Plan Number

<b>No. on map or plan</b>	<b>Owners or reputed owners</b>	<b>Lessees or reputed lessees</b>	<b>Occupiers</b>

**Annex B – Confirmation Schedule (to be returned to Transport Scotland)**

**Confirmation of Land Interests**

Land Confirmation Plan Number

I/we have reviewed the information on the above plan and accompanying extracts from the Book of Reference and confirm that the information shown is (tick box as appropriate):

correct

incorrect

Comments (please include below any corrections required and/or details of registered titles relating to land ownership)

Name

Signed

Date

**APPENDIX 9: NOTICE OF PROPOSED HYBRID BILL – FORTH CROSSING BILL**

The Scottish Ministers intend to introduce the Forth Crossing Bill (“the Bill”) to the Scottish Parliament on or around 16 November 2009.

The purpose of the Bill is to obtain authority for a scheme which includes the construction of a new bridge over the Firth of Forth to the west of the Forth Road Bridge. The works authorised by the Bill comprise the construction of a new bridge and connecting roads to link to the road network and the upgrading of existing roads and junctions. For the purpose of giving effect to the scheme, the Bill authorises the compulsory purchase of land including rights in land, or where appropriate the occupation of land. The Bill sets out mechanisms for acquiring land and compensation arrangements for acquisition and occupation.

The principal works in respect of the scheme are detailed in the Bill as a schedule. The Bill also gives powers to carry out ancillary works. Land liable to compulsory purchase is identified on maps accompanying the Bill and in a schedule to the Bill.

The Bill will be accompanied by the following documents:

*These documents relate to the Forth Crossing Bill (SP Bill 33) as introduced in the Scottish Parliament on 16 November 2009*

- Explanatory Notes;
- a Policy Memorandum;
- a Financial Memorandum;
- Maps, plans, sections and book of reference;
- a Heritable Interests Statement;
- an Environmental Statement;
- an Executive statement on legislative competence;
- the Presiding Officer's statement on legislative competence;
- an assigning of copyright/licensing agreement.

On the day after introduction, copies of the Bill, the accompanying documents and a non-technical summary of the Environmental Statement will be available for inspection at the following locations:

**Alloa Library**

26-28 Drysdale Street, Alloa,  
FK10 1JL

**AK Bell Library**

York Place, Perth,  
PH2 8EP

**Blackhall Library**

56 Hillhouse Road, Edinburgh,  
EH4 5EG

**Carmondean Library**

Carmondean Centre, Livingston,  
EH54 8PT

**Central Library**

George IV Bridge, Edinburgh,  
EH1 1EG

**Central Library**

Corn Exchange Road, Stirling,  
FK8 2HX

**Dalgety Bay Library**

Regents Way, Dalgety Bay,  
Dunfermline, KY11 9UY

**Dalkeith Library**

White Hart Street, Dalkeith,  
EH22 1AE

**Dunfermline Central Library**

1 Abbot Street, Dunfermline,  
KY12 7NL

**Forfar Library**

50-56 West High Street, Forfar,  
DD8 1BA

**Glenwood Library**

Glenwood Shopping Centre,  
Glenrothes, KY6 1PA

**Kirkcaldy Central Library**

War Memorial Gardens, Kirkcaldy,  
KY1 1YG



**Kirkliston Library**

16 Station Road, Kirkliston,  
EH29 9BE

**Leith Library**

28-30 Ferry Road, Edinburgh,  
EH6 4AE

**Linlithgow Library**

The Vennel, Linlithgow,  
EH49 7EX

**Morningside Library**

184 Morningside Road,  
Edinburgh, EH10 4PU

**North Queensferry Community Centre**

Brock Street, North Queensferry,  
Inverkeithing, KY11 1JD

**Portobello Library**

14 Rosefield Avenue, Edinburgh,  
EH15 1AU

**Wester Hailes Library**

1 West Side Plaza, Edinburgh,  
EH14 2FT

**South Queensferry Library**

9 Shore Road, South Queensferry,  
EH30 9RD

**St Andrews Library**

Church Square, St Andrews,  
KY12 9NN

In addition to the above copies of the Bill, the accompanying documents and a non-technical summary of the Environmental Statement will also be available for inspection at:

- Transport Scotland Offices, Buchanan House, 58 Port Dundas Road, Glasgow G4 0HF
- Scottish Government, IMU Library Services, F Spur, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD (by appointment on: 0131 244 4556)

Public exhibitions will also be held at the following locations:

**Edinburgh**

Holyrood Hotel,  
81 Holyrood Road,  
Edinburgh, EH8 8AU

Wednesday 18 and Thursday 19 November,  
10am – 8pm

**South Queensferry**

Orocco Pier,  
17 High Street,  
South Queensferry EH30 9PP

Monday 23, Tuesday 24 & Thursday 26 November, 10.30am – 8.30pm

**North Queensferry**

Queensferry Hotel Business Centre,  
St Margaret's Head,  
North Queensferry KY11 1HP  
Friday 27, Monday 30 November and  
Tuesday 1 December, 10.30am – 8.30pm  
Saturday 28 November, 10am – 5pm

**Kirkliston**

Kirkliston Community Centre,  
16-18 Queensferry Road,  
Kirkliston EH29 9AQ  
Thursday 3 and Friday 4 December, 10.30am – 8.30pm  
Saturday 5 December 10am – 5pm

Copies of the maps, plans and sections, Environmental Statement, non-technical summary of the Environmental Statement and Book of Reference referred to above will be available for purchase.

Please contact in the first instance The Forth Replacement Crossing Project Team, 7th Floor North, Buchanan House, 58 Port Dundas Road, Glasgow G4 0HF, tel: 0141 272 7578, email: [frcenquiries@transportscotland.gsi.gov.uk](mailto:frcenquiries@transportscotland.gsi.gov.uk). The maps, plans and sections, Environmental Statement and non-technical summary of the Environmental Statement will also be available on the project's website at [www.forthreplacementcrossing.info](http://www.forthreplacementcrossing.info)

The Bill, Policy Memorandum and the Explanatory Notes (including the Financial Memorandum and the Heritable Interests Statement) will be published by the Parliament and can be purchased from any Blackwell's bookshop. They will also be available on the Scottish Parliament website at [www.scottish.parliament.uk](http://www.scottish.parliament.uk)

Objections to the Bill may be lodged with the Parliament in a 60 day period following introduction (certain days may not count in the 60 day period and the deadline for objections will be confirmed by the Parliament on introduction). Any objections must be accompanied by the lodging fee of £20. All objections should be sent to the Non Executive Bills Unit, The Scottish Parliament, Edinburgh EH99 1SP (tel: 0131 348 5246, email: [hybrid.bills@scottish.parliament.uk](mailto:hybrid.bills@scottish.parliament.uk)). Any questions relating to the parliamentary procedures involved in the processing of this Bill should be directed to the Non Executive Bills Unit which can also provide additional information about the objection process, including details of the admissibility criteria for objections, as well as supplying a general information leaflet for potential objectors. Any questions relating to the content of the Bill should be directed to the Forth Replacement Crossing Team, 7th Floor, Buchanan House, 58 Port Dundas Road, Glasgow G4 0HF (tel: 0141 272 7578, email: [frcenquiries@transportscotland.gsi.gov.uk](mailto:frcenquiries@transportscotland.gsi.gov.uk)).

**A C McLaughlin** A member of staff of the Scottish Ministers Dated: Monday 2 November 2009  
TRANSPORT SCOTLAND

## **APPENDIX 10: TEXT FROM ILLUSTRATED LEAFLET SENT TO ALL BUSINESSES AND RESIDENTS IN THE SURROUNDING AREAS**

### **FORTH REPLACEMENT CROSSING**

#### **NOTICE OF THE PROPOSED FORTH CROSSING BILL**

##### **About the Forth Replacement Crossing**

The Forth Replacement Crossing is a major infrastructure project for Scotland designed to safeguard the vital connection across the Firth of Forth.

The scheme, which has been developed by Transport Scotland, an agency of the Scottish Government, will involve the construction of a new cable-stayed bridge to the west of the existing Forth Road Bridge with associated connecting roads on the north and south side of the bridge.

The existing Forth Road Bridge will be retained for use by public transport, pedestrians, cyclists and other specified users. The new bridge will carry all other traffic, including cars and heavy goods vehicles.

An Intelligent Transport System will be introduced between the Halbeath junction on the M90 and the Newbridge junction on the M9. This system will include overhead gantries and other measures to provide information and instructions to drivers and help to improve the flow of traffic on the road network.

##### **The Forth Crossing Bill**

The Scottish Ministers intend to introduce the Forth Crossing Bill in the Scottish Parliament on or around 16 November 2009. The purpose of the Bill is to seek authority for the scheme to go ahead.

The scheme will involve:

- the construction and operation of a new bridge and connecting roads to link to the road network
- the upgrading of existing roads and junctions
- changes to the designation and ownership of existing roads to allow the introduction of Intelligent Transport Systems (in particular Variable Speed Limits) and
- the compulsory purchase or, where appropriate, occupation of land necessary to build the scheme

In addition to the Bill the following documents will also be lodged:

- Explanatory Notes relating to the Bill
- a Policy Memorandum explaining the policy objectives of the Bill and other matters
- a Financial Memorandum giving an estimate of the cost and funding
- maps, plans and cross sections of the proposed works

- a Book of Reference listing the land required for the scheme and the people who own, lease or occupy that land
- an Environmental Statement, Code of Construction Practice and a Non Technical Summary of that Statement and
- a Heritable Interests Statement giving details of the arrangements to notify those whose property is affected by the Bill.

### **Where you can view the Bill documents**

Shortly after the introduction of the Bill, copies of the Bill and the accompanying documents will be available for inspection by the public at the following locations:

#### **Alloa Library**

26-28 Drysdale Street, Alloa,  
FK10 1JL

#### **AK Bell Library**

York Place, Perth,  
PH2 8EP

#### **Blackhall Library**

56 Hillhouse Road, Edinburgh,  
EH4 5EG

#### **Carmondean Library**

Carmondean Centre, Livingston,  
EH54 8PT

#### **Central Library**

George IV Bridge, Edinburgh,  
EH1 1EG

#### **Central Library**

Corn Exchange Road, Stirling,  
FK8 2HX

#### **Dalgety Bay Library**

Regents Way, Dalgety Bay,  
Dunfermline, KY11 9UY

#### **Dalkeith Library**

White Hart Street, Dalkeith,  
EH22 1AE

#### **Dunfermline Central Library**

1 Abbot Street, Dunfermline,  
KY12 7NL

#### **Forfar Library**

50-56 West High Street, Forfar,  
DD8 1BA

#### **Glenwood Library**

Glenwood Shopping Centre, Glenrothes,  
KY6 1PA

#### **Kirkcaldy Central Library**

War Memorial Gardens, Kirkcaldy,  
KY1 1YG

#### **Kirkliston Library**

16 Station Road, Kirkliston,  
EH29 9BE

#### **Leith Library**

28-30 Ferry Road, Edinburgh,  
EH6 4AE

*These documents relate to the Forth Crossing Bill (SP Bill 33) as introduced in the Scottish Parliament on 16 November 2009*

**Linlithgow Library**

The Vennel, Linlithgow,  
EH49 7EX

**Morningside Library**

184 Morningside Road, Edinburgh,  
EH10 4PU

**North Queensferry Community Centre,**

Brock Street, North Queensferry,  
Inverkeithing, KY11 1JD

**Portobello Library**

14 Rosefield Avenue, Edinburgh,  
EH15 1AU

**Wester Hailes Library**

1 West Side Plaza, Edinburgh,  
EH14 2FT

**South Queensferry Library**

9 Shore Road, South Queensferry,  
EH30 9RD

**St Andrews Library**

Church Square, St Andrews,  
KY12 9NN

And at the following offices:

**Transport Scotland**

Buchanan House,  
58 Port Dundas Road,  
Glasgow G4 0HF

**Scottish Government**

IMU Library Services, F Spur,  
Saughton House, Broomhouse Drive,  
Edinburgh EH11 3XD

(by appointment on Tel: 0131 244 4556)

The Bill will be published by the Scottish Parliament, but the Bill and all other documentation will be available to view on Transport Scotland's Forth Replacement Crossing website [www.forthreplacementcrossing.info](http://www.forthreplacementcrossing.info) following the Bill's introduction.

**Public Information Exhibitions**

Public exhibitions will also take place at:

**Edinburgh**

Holyrood Hotel,  
81 Holyrood Road,  
Edinburgh, EH8 8AU

Wednesday 18 and Thursday 19 November,  
10am – 8pm

### **South Queensferry**

Orocco Pier,  
17 High Street,  
South Queensferry EH30 9PP  
Monday 23, Tuesday 24 & Thursday 26 November, 10.30am – 8.30pm

### **North Queensferry**

Queensferry Hotel Business Centre,  
St Margaret's Head,  
North Queensferry KY11 1HP  
Friday 27, Monday 30 November and  
Tuesday 1 December, 10.30am – 8.30pm  
Saturday 28 November, 10am – 5pm

### **Kirkliston**

Kirkliston Community Centre,  
16-18 Queensferry Road,  
Kirkliston EH29 9AQ  
Thursday 3 and Friday 4 December, 10.30am – 8.30pm  
Saturday 5 December 10am – 5pm

### **Making an objection**

Objections to the Bill may be lodged with the Parliament within 60 days of the Bill's introduction. A separate leaflet on the Bill and the objection process is available from the Scottish Parliament's Non Executive Bills Unit or online at: [www.scottishparliament.uk/business/so/sto-c.htm](http://www.scottishparliament.uk/business/so/sto-c.htm)

### **Further information**

For more information on the Forth Replacement Crossing scheme please visit the project website at [www.forthreplacementcrossing.info](http://www.forthreplacementcrossing.info) or contact the Transport Scotland team on:

**Phone:** 0141 272 7578

**Email:** [frcenquiries@transportscotland.gsi.gov.uk](mailto:frcenquiries@transportscotland.gsi.gov.uk)

**Post:** Forth Replacement Crossing, Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow G4 0HF

[www.forthreplacementcrossing.info](http://www.forthreplacementcrossing.info)

## **ASSIGNATION OF COPYRIGHT AND LICENCE**

370. On 13 November 2009, in accordance with Rule 9C.3.2(i), Frazer Henderson, a member of staff of the Scottish Ministers, made the following statements on behalf of the Scottish Ministers:

“We, the Scottish Ministers, hereby assign to the Scottish Parliamentary Corporate Body, copyright in the Explanatory Notes and any revised Explanatory Notes, the Written Statement, the Policy Memorandum, any Heritable Interests Statement and any Financial Memorandum accompanying the Forth Crossing Bill.”

“We, the Scottish Ministers, hereby license the Scottish Parliamentary Corporate Body to use or reproduce for the Parliament’s purposes the plans, maps, sections, book of reference and Environmental Statement accompanying the Forth Crossing Bill, together with any other documents relevant to the Bill submitted to the Parliament on, or after, introduction.”

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## **SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

371. On 13 November 2009, the Cabinet Secretary for Finance and Sustainable Growth (John Swinney MSP) made the following statement:

“In my view, the provisions of the Forth Crossing Bill would be within the legislative competence of the Scottish Parliament.”

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## **PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE**

372. On 12 November 2009, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Forth Crossing Bill would be within the legislative competence of the Scottish Parliament.”

*These documents relate to the Forth Crossing Bill (SP Bill 33) as introduced in the Scottish Parliament on 16 November 2009*

# **FORTH CROSSING BILL**

## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

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