



# Forth Crossing Act 2011

## 2011 asp 2

VALID FROM 18/03/2011

### PART 1

#### WORKS

#### 1 Power to construct Forth Crossing etc.

(1) Ministers may—

- (a) carry out the principal works, being the works set out in schedule 1 for the construction of a new bridge over the Firth of Forth (“the Forth Crossing”) and for the construction or improvement of associated roads and structures, and
- (b) carry out and maintain the ancillary works, being—
  - (i) such works of the type described in schedule 2, and
  - (ii) such other works of any type,

as Ministers consider necessary or expedient for the purposes of, in connection with, in consequence of or incidental to the carrying out of the principal works or the maintenance of those works under the 1984 Act.

(2) The principal works and the ancillary works are together referred to in this Act as the “Forth Crossing works”.

#### 2 Bridge proportions

Ministers, when carrying out or maintaining the principal works, must ensure—

- (a) that the Forth Crossing provides headroom of not less than 47.85 metres above ordnance datum (Newlyn) between—
  - (i) Central Tower and the North Tower, and
  - (ii) Central Tower and the South Tower,
- (b) that the Central Tower is located on Beamer Rock,
- (c) that there is a clear span between the Central Tower and the North Tower which is not less than 580 metres,

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- (d) that there is a clear span between the Central Tower and the South Tower which is not less than 580 metres,
- (e) that the height of the Central Tower does not exceed 220 metres above ordnance datum (Newlyn), and
- (f) that the height of the North Tower and the South Tower does not exceed 210 metres above ordnance datum (Newlyn).

### **3 Maximum construction height**

Ministers, when carrying out or maintaining the principal works, may not operate above the maximum construction height without the consent of the airport operator of Edinburgh Airport.

“maximum construction height” means—

- (a) for works associated with the Central Tower, 235 metres above ordnance datum (Newlyn), and
- (b) for works associated with the North Tower, the South Tower and any other part of the Forth Crossing, 225 metres above ordnance datum (Newlyn).

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

- (1) Subject to sections 2 and 3, Ministers, when carrying out or maintaining the principal works, may—
  - (a) deviate laterally from the lines or situations shown on the Parliamentary plans to any extent within the limits of deviation, and
  - (b) deviate vertically from the levels shown on the Parliamentary sections to any extent upwards or downwards.
- (2) Ministers may carry out and maintain the ancillary works only within the Act limits.

### **5 Bridge marking and lighting**

- (1) Ministers must—
  - (a) ensure that the Forth Crossing is adequately marked and lit—
    - (i) during construction, and
    - (ii) at all times after construction,
  - (b) maintain the marking and lighting in good working condition (for example, by acting as soon as reasonably practical to rectify any defects or failures which cause the marking and lighting to fall below that standard), and
  - (c) immediately notify the airport operator of Edinburgh Airport of any defect or failure in the marking or lighting which cause it to fall below that standard.
- (2) Ministers must consult the airport operator of Edinburgh Airport on the marking and lighting of the Forth Crossing—
  - (a) before construction of the Forth Crossing begins,
  - (b) immediately after construction of the Forth Crossing is complete,
  - (c) before any of the marking or lighting is renewed or replaced (except where done so as an urgent repair or in accordance with routine maintenance), and
  - (d) at other times as they think fit.

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- (3) Ministers must comply with any reasonable request notified to them by the airport operator of Edinburgh Airport which—
  - (a) concerns the marking and lighting of the Forth Crossing,
  - (b) is made in order to discharge an obligation on the operator which—
    - (i) concerns aviation security and safety, and
    - (ii) arises by virtue of any enactment,
  - (c) specifies the enactment and any other relevant material by virtue of which the obligation arises, and
  - (d) is not inconsistent with any other obligation on Ministers under any enactment.

## **6 Interference with navigation**

- (1) Ministers, when carrying out the Forth Crossing works, may interfere with a right of navigation in the Firth of Forth (within the Act limits) but only—
  - (a) to the extent as may be required to carry out or maintain the Forth Crossing works, or
  - (b) where the Forth Crossing works may endanger navigation.
- (2) The interference with navigation may consist of such steps as Ministers consider necessary, including—
  - (a) controlling navigation,
  - (b) temporary closure of the Firth of Forth, or a part of it, to navigation,
  - (c) carrying out scour protection works,
  - (d) construction of temporary structures,
  - (e) construction of facilities for temporary mooring or anchoring of barges and other vessels,
  - (f) placing, removing or maintaining buoys, beacons or other navigational warning apparatus.
- (3) Ministers must—
  - (a) consult the relevant navigation authority before interfering with a right of navigation, and
  - (b) take reasonable steps to secure that the minimum obstruction, delay or interference is caused to vessels using or intending to use the Firth of Forth.
- (4) Ministers are not liable for any loss arising (including any costs or expenses sustained) as a direct or indirect result of exercising their powers under this section.

## **7 Dredging etc.**

- (1) Ministers, when carrying out or maintaining the Forth Crossing works, may deepen, widen, dredge, scour, cleanse, alter, improve, or blast rock on any part of the bed of the Firth of Forth (within the limits of deviation).
- (2) Ministers may use, appropriate or dispose of anything removed in exercise of the power conferred by this section.

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

No activity authorised by this Act constitutes a licensable marine activity for the purposes of Part 4 of the Marine (Scotland) Act 2010 (asp 5).

## **9 Interference with railways**

Ministers must—

- (a) consult the relevant railway undertaker before beginning any ancillary works which they consider may interfere with a railway, and
- (b) consider any representations by the undertaker on the carrying out of those works.

## **10 Trees and shrubs**

(1) Ministers may cut down or lop, or cut back the roots of, any tree or shrub near any part of the Forth Crossing works where they consider that such action is reasonably necessary in order to prevent the tree or shrub from—

- (a) obstructing or otherwise interfering with the carrying out, maintenance or operation of the Forth Crossing works,
- (b) obstructing or otherwise interfering with any apparatus used in connection with the Forth Crossing works, or
- (c) constituting a danger to persons carrying out or using the Forth Crossing works.

(2) Ministers, when taking such action in relation to a tree or shrub, must make reasonable efforts to avoid unnecessary damage to the tree or shrub.

(3) Neither—

- (a) a tree preservation order made under section 160(1) of the 1997 Act, nor
- (b) section 172 of the 1997 Act,

has effect in relation to anything Ministers do for the purposes of the Forth Crossing works in relation to a tree, group of trees or woodland.

VALID FROM 18/03/2011

## **PART 2**

### **ROADS**

## **11 Special roads**

(1) Ministers may designate any road or proposed road identified in schedule 3 (or any part of such a road) as a special road for the use by traffic falling within such classes set out in Schedule 3 to the 1984 Act as are specified in column (4) of schedule 3.

(2) Ministers must—

- (a) give notice of a designation (and of the date from which it takes effect) to—
  - (i) the local authority for each area through which the road runs, and

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- (ii) the navigation authority for any water which the road crosses, and
- (b) take such steps as they consider reasonable to bring the designation, and the date from which it takes effect, to the attention of the public.

(3) Ministers are to be treated for the purposes of the 1984 Act and all other enactments as having been authorised by a scheme under section 7 of the 1984 Act to provide a special road designated under this section (and are accordingly to be the “special roads authority” in relation to that road).

(4) This section is, for the purposes of section 145 of the 1984 Act, to be treated as a scheme made under section 7 of the 1984 Act (and section 145 of the 1984 Act accordingly operates, with necessary modifications, to allow the repeal or other modification of this section).

## **12 Trunk roads**

(1) Each proposed road identified in schedule 3 or 4 becomes a trunk road on the date this subsection comes into force.

(2) A road identified in schedule 5 becomes a trunk road on such date as is determined by Ministers.

(3) A road designated under section 11 as a special road which is not already a trunk road becomes a trunk road on the day it becomes a special road.

(4) Ministers must—

- (a) give notice of a determination (and of the date from which it takes effect) to—

- (i) the local authority for each area through which the road runs, and
- (ii) the navigation authority for any water which the road crosses, and

- (b) take such steps as they consider reasonable to bring the determination, and the date from which it takes effect, to the attention of the public.

(5) Section 112 of the 1984 Act applies (with any necessary modifications) where a road becomes a trunk road by virtue of subsection (2) or (3).

(6) Nothing in this section prevents Ministers from detrunking a road which becomes a trunk road under this section (or any part of such a road) by making a subsequent order to that effect under section 5 of the 1984 Act.

(7) In the definition of “trunk road” in section 151(1) of the 1984 Act, after “Town and Country Planning (Scotland) Act 1997” insert “ or by virtue of section 12 of the Forth Crossing Act 2011 (asp 2) ”.

## **13 Roads to be transferred to local roads authorities**

(1) Ministers must, before beginning a work specified in column (3) of schedule 6—

- (a) consult the relevant local roads authority listed in column (4) of schedule 6, and
- (b) consider any representations by the authority on the carrying out of that work.

(2) Each road identified in schedule 6 is transferred to the local roads authority listed for that road in column (4) of that schedule on its transfer date.

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- (3) The transfer date for a road identified in schedule 6 is the next 1st April following the date on which Ministers notify the local roads authority that the road is opened for the purposes of through traffic.
- (4) Section 112 of the 1984 Act applies (with any necessary modifications) to the transfer of such a road to the local roads authority, whether or not the road in question is a trunk road.

#### **14 Stopping up of roads**

- (1) Ministers may, when carrying out the Forth Crossing works, stop up each road identified in schedule 7.
- (2) A road identified in Part 2 of schedule 7 must not be stopped up unless—
  - (a) the substitute for the road identified in column (5) of Part 2 of schedule 7 has been completed and is available for use, or
  - (b) a temporary alternative road is provided and is available for use.
- (3) Ministers may, without making any payment, appropriate and use for the purposes of the Forth Crossing works so much of a stopped up road as is bounded on both sides by land within the limits of deviation.
- (4) Ministers must, before stopping up any road, take such steps as they consider reasonable to bring the closure date, and any alternative road, to the attention of the public.
- (5) Where Ministers open a substitute road identified in column (5) of Part 2 of schedule 7, they must—
  - (a) notify the local authority for each area through which the road runs, and
  - (b) take such steps as they consider reasonable to bring the opening, and the date from which it takes effect, to the attention of the public.

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

- (1) Ministers may, when carrying out the Forth Crossing works, stop up each means of access to land identified in schedule 8.
- (2) A means of access identified in Part 2 of schedule 8 must not be stopped up unless—
  - (a) the substitute for the means of access identified in column (5) of Part 2 of schedule 8 has been completed and is available for use, or
  - (b) a temporary alternative means of access is provided and is available for use.
- (3) Ministers must, before stopping up a means of access, take such steps as they consider reasonable to bring the closure date, and any alternative means of access, to the attention of the owner and occupier of the land.
- (4) Where subsection (2)(a) applies, Ministers must give the owner of the land containing the stopped up means of access notice when the substitute means of access is complete (a “completion notice”).
- (5) An owner may, within 28 days of a completion notice being given, object to Ministers on the ground that the substitute means of access is not completed.
- (6) On receipt of an objection, Ministers may—

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- (a) withdraw a completion notice and carry out further works on the substitute means of access, or
  - (b) refer the dispute to the Lands Tribunal for determination (and notify the objector that it has been so referred).
- (7) Ministers must carry out reasonable maintenance of a substitute means of access for the 12 months after—
- (a) the date of the original or any re-issued completion notice, or
  - (b) in the case of a dispute referred to the Lands Tribunal, the earlier of—
    - (i) the date of final Lands Tribunal decision, or
    - (ii) the date of final settlement of the matter.

## **16 Extinction of rights of way**

All rights of way over any part of a road or means of access stopped up under section 14 or 15 are extinguished.

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

- (1) The solum of a stopped up road is to vest—
- (a) in the owner of the land adjoining the stopped up road unless—
    - (i) paragraph (b) applies, or
    - (ii) it is subject to a prior claim of any person by reason of title,
  - (b) in Ministers where they own, have served a notice to treat in relation to, or have made a general vesting declaration in relation to, any land adjoining the stopped up road.
- (2) Any dispute arising under this section as to the vesting of the solum may be referred on summary application by any interested party to the sheriff in whose sheriffdom the land is located; and the decision of the sheriff on the matter is final.

## **18 Works in roads where Ministers are not the roads authority**

- (1) This section applies to Forth Crossing works in a road for which Ministers are not the roads authority.
- (2) Ministers must—
- (a) before commencing the works—
    - (i) consult the roads authority for that road,
    - (ii) consider any representations by the authority on the carrying out of the works, and
  - (b) enter in the Scottish Road Works Register such information relating to the works and to their completion as would have been required under section 112B(5) and (6) of the 1991 Act had the works been carried out under section 2 of the 1984 Act.
- (3) The roads authority—
- (a) does not acquire any right or liability in respect of the carrying out of the works, including rights or liabilities in respect of—
    - (i) work done, services rendered, goods delivered, or money due for payment, before the date of completion of the works,

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- (ii) damages or compensation for any act or omission before that date, or
- (iii) the price of, or compensation for, any land purchased, or for which a contract to purchase has been made, before that date,
- (b) must produce to Ministers such documents and other information as Ministers may require relating to those rights and liabilities.
- (4) Any dispute between Ministers and the roads authority as to the rights and liabilities in respect of the carrying out of the works is to be resolved by arbitration.

#### **19 Access to public roads**

- (1) Roads authority consent is not required for Forth Crossing works consisting of works to provide new, or to improve an existing, means of access to or from a public road.
- (2) Ministers must, before beginning any such works—
  - (a) consult the local roads authority for the public road, and
  - (b) consider any representations by the authority on the carrying out of those works.

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

- (1) Section 10 (certain special roads to be trunk roads) of the 1984 Act does not apply to the creation of a special road under this Act.
- (2) Part 3 (new roads) of the 1984 Act does not apply to the construction of roads as part of the Forth Crossing works.
- (3) Section 56 to 61A (control of works and excavations) of the 1984 Act do not apply to the Forth Crossing works.
- (4) Sections 103 to 111 (acquisition of land) of the 1984 Act do not apply to the acquisition of land for the Forth Crossing works.

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### **PART 3**

#### **LAND**

#### **21 Incorporation of enactments**

- (1) The Lands Clauses Acts are incorporated with this Act, except sections 15, 16, 18, 20 to 60, 62 to 66, 83 to 88, 90, 116, 120 to 124 and 142 and 143 of the 1845 Lands Act.
- (2) Section 6, and sections 71 to 78 (as originally enacted), of the Railways Clauses Consolidation (Scotland) Act 1845 (c.33) are incorporated with this Act.
- (3) Provisions incorporated by this section apply only in so far as they are not inconsistent with, or expressly varied by, any provision of this Act.
- (4) In construing provisions incorporated by this section—



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- (a) this Act is deemed to be the special Act,
  - (b) Ministers are deemed to be the promoter of the undertaking or the company,
  - (c) the Forth Crossing works are deemed to be the works, the undertaking or the railway, and
  - (d) “land” has the same meaning as in this Act.
- (5) The Lands Clauses Acts, by virtue of subsection (4)(d), accordingly apply (subject to any necessary modifications) to the compulsory acquisition of a servitude or other right in or over land under this Act (whether by acquiring existing rights or creating new rights).

## **22 Compulsory acquisition of land**

Ministers may acquire compulsorily any land—

- (a) within the limits of deviation, or
- (b) specified in schedule 9,

which they require for the purposes of the Forth Crossing works.

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

(1) Ministers may acquire by agreement any land—

- (a) which may be acquired compulsorily under section 22,
- (b) which is to be used to mitigate any adverse effect arising from the carrying out or the operation of the Forth Crossing works, or
- (c) the enjoyment of which will be seriously affected by the carrying out or the operation of the Forth Crossing works.

This subsection does not affect any other power of Ministers to acquire the land concerned, or any other land, by agreement.

(2) In the Land Compensation (Scotland) Act 1973 (c.56)—

- (a) at the end of section 24(6), insert “ or authorised by the Forth Crossing Act 2011 ”, and
- (b) at the end of section 25(5), insert “ or any works authorised by the Forth Crossing Act 2011 ”.

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

(1) Ministers may acquire servitudes or other rights in land under section 22 or 23—

- (a) by acquiring existing servitudes or other rights, or
- (b) by creating new, permanent or temporary, servitudes or other rights.

(2) Ministers, when compulsorily acquiring servitudes or other rights in or over land under section 22, are not required to acquire any other part of, or interest in, the land concerned.

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

Where Ministers acquire land compulsorily under section 22 (and section 24 does not apply)—

- (a) any servitude or real burden over that land is extinguished, and

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(b) any development management scheme applying as respects that land is disappplied,  
on the registration of the relevant conveyance.

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

Any person who is entitled by section 7 of the 1845 Lands Act (as incorporated with this Act) to dispose of land may, for any purpose connected with this Act, create a new servitude or other right in relation to such land. But this section does not permit the creation of a servitude or other right in relation to water in which a person other than the creator has an interest.

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

- (1) A servitude or other right acquired by Ministers under this Act is to be treated for all purposes as benefiting—
- (a) any land held by Ministers for the purposes of the Forth Crossing works, or
  - (b) such other land specified in the instrument creating the servitude or other right.
- (2) Despite section 75(1) of the Title Conditions (Scotland) Act 2003 (asp 9), the deed which creates a servitude so acquired is effective regardless of whether it is registered against the benefited property.

## **28 Minerals**

Any conveyance transferring land to Ministers in pursuance of a compulsory acquisition under section 22 is deemed to except all mines of coal, ironstone, slate, or other minerals under the land other than—

- (a) any parts of the mines or minerals which need to be—
  - (i) dug,
  - (ii) carried away, or
  - (iii) used,in the carrying out of the Forth Crossing works, and
- (b) those expressly specified in the conveyance transferring the land.

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

Ministers' power to acquire land compulsorily under section 22 ceases to have effect 5 years after Royal Assent. This section does not apply to any land in respect of which a notice to treat is served, or a general vesting declaration is made, in pursuance of section 22 within 5 years of Royal Assent.

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## PART 4

### TAKING TITLE TO LAND

#### *Notice to treat procedure*

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

- (1) This section applies where Ministers choose to acquire any land under this Act by serving a notice under section 17 of the 1845 Lands Act as incorporated with this Act (a “notice to treat”).
- (2) The notice to treat must—
  - (a) be served in accordance with section 76,
  - (b) describe the land to which the notice relates, and
  - (c) identify itself plainly as a document of importance.

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

- (1) A person may, within 28 days of service of a notice to treat in respect of a partial acquisition, object to the partial acquisition.
- (2) An objection must—
  - (a) be served on Ministers,
  - (b) state that the person is willing and able to sell to Ministers the whole of the house, building, factory or other land concerned, and
  - (c) identify the land that the person is so willing and able to sell.
- (3) Ministers must deal with an objection by—
  - (a) agreeing to acquire the land identified in the objection by notifying the objector to that effect (in which case the notice to treat is deemed to cover the land identified in the objection, regardless of whether any of it is outwith the Act limits),
  - (b) withdrawing the notice to treat by notifying the objector to that effect, or
  - (c) referring the objection to the Lands Tribunal for determination under section 32 and notifying the objector that it has been so referred.
- (4) If Ministers fail to act under subsection (3) within 3 months of an objection being served, the notice to treat is to be treated as withdrawn.

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

- (1) The Lands Tribunal, on receiving a referral under section 31(3)(c), must consider—
  - (a) in the case of a partial acquisition of a house, building or factory, if some or all of the land in the notice to treat (with or without some or all of the remainder of the land identified in the objection) can be acquired without material detriment to the remainder of the land identified in the objection,

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- (b) in the case of a partial acquisition of a house with a park or garden, if some or all of the land in the notice to treat (with or without some or all of the remainder of the land identified in the objection) can be acquired without seriously affecting the amenity or convenience of the house.
- (2) If the Lands Tribunal determine—
- (a) in the case of a partial acquisition of a house, building or factory, that all of the land in the notice to treat can be acquired without material detriment to the remainder of the land identified in the objection, or
  - (b) in the case of a partial acquisition of a house with a park or garden, that all of the land in the notice to treat can be acquired without seriously affecting the amenity or convenience of the house,
- the notice to treat is to have effect as originally served.
- (3) If the Lands Tribunal does not determine as described in subsection (2), it must determine the land which Ministers ought to acquire, being—
- (a) some of the land in the notice to treat, or
  - (b) some or all of the land in the notice to treat with the addition of some or all of the remainder of the land identified in the objection,
- and the notice to treat is deemed to cover that land (regardless of whether any of it is outwith the Act limits).
- (4) Ministers may withdraw a notice to treat within 6 weeks of a Lands Tribunal determination under subsection (3) by notifying the objector to that effect.

### **33 Severance of agricultural land**

Nothing in sections 31 or 32 affects the application of sections 49 and 50 of the Land Compensation (Scotland) Act 1973 (c.56) in relation to agricultural land.

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

- (1) A notice to treat served in pursuance of this Act becomes invalid 3 years (or such longer period as may be agreed under subsection (2)) after it is served, unless—
- (a) the compensation has been agreed, awarded, paid or paid into a bank (or the question of compensation has been referred to the Lands Tribunal),
  - (b) a general vesting declaration has been made in respect of the land concerned, or
  - (c) Ministers have entered and taken possession of the land concerned under section 39.
- (2) The period of 3 years referred to in subsection (1) may be extended (and further extended) by agreement between—
- (a) Ministers, and
  - (b) the owner of the land.
- (3) Where a notice to treat is invalidated by this section, Ministers must give notice of that fact to—
- (a) the person on whom the notice to treat was served, and
  - (b) any other person who, since it was served, could have made an agreement to extend under this section.

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### *General vesting declarations*

#### **35 General vesting declarations**

- (1) Ministers may vest in themselves by a general vesting declaration any land which they are authorised to acquire compulsorily under section 22.
- (2) Schedule 15 to the 1997 Act accordingly applies to the compulsory acquisition of land under section 22, with the following modifications—
  - (a) this Act is to be treated as a compulsory purchase order,
  - (b) Ministers are the “acquiring authority”,
  - (c) section 36 of this Act applies instead of paragraph 2, and
  - (d) in the definition of land in paragraph 39, “relevant enactments” means this Act.

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

- (1) Before making a general vesting declaration, Ministers must—
  - (a) publish a compulsory purchase notice in one or more local newspapers circulating in the locality in which the land comprised in the general vesting declaration is situated,
  - (b) serve a notice in the same or a similar form (together with a copy of this Act and the Parliamentary plans) on—
    - (i) the owner of the land to which the general vesting declaration relates,
    - (ii) any occupier of that land (except tenants for any period of no longer than a month),
    - (iii) the holder of any real burden which would be extinguished under section 25 on the registration of the general vesting declaration, and
    - (iv) if a development management scheme applies to the land, the owners' association concerned.
- (2) A “compulsory purchase notice” means a notice in the form prescribed for notices under paragraph 6 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) which—
  - (a) states that this Act has received Royal Assent,
  - (b) describes the land to which the general vesting declaration relates,
  - (c) names a place where a copy of this Act, of the Parliamentary plans and of the book of reference may be inspected at all reasonable hours,
  - (d) states the effect of paragraphs 1 to 8 of Schedule 15 to the 1997 Act in the manner prescribed for the purposes of sub-paragraph (1)(a) of paragraph 2 of Schedule 15 to the 1997 Act, and
  - (e) invites every person who, if the general vesting declaration were made, would be entitled to compensation to give Ministers information in the form prescribed for the purposes of sub-paragraph (1)(b) of that paragraph.

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VALID FROM 03/02/2011

## PART 5

### POWERS TO ENTER AND USE LAND

#### **37 Temporary possession of land**

- (1) Ministers may, when carrying out the Forth Crossing works, enter and take temporary possession of any land specified in columns (1), (2) and (3) of schedule 10—
  - (a) for the purpose specified in respect of that land in column (4) of that schedule, or
  - (b) for any other purpose which Ministers consider necessary or expedient for the purposes of, in connection with, or in consequence of, the works specified in respect of that land in column (5) of that schedule.
- (2) Ministers may remain in temporary possession of the land for—
  - (a) up to one year after the day on which they consider that the works in relation to which they took possession of the land are completed, or
  - (b) such longer period as may be agreed with the owner of the land.
- (3) Where the land is subject to a lease (including a sub-lease), the lease is terminated on the date on which Ministers first enter the land.

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

Ministers may, for any purposes connected with this Act, enter any land in order to—

- (a) survey the land,
- (b) carry out archaeological or other investigations,
- (c) carry out maintenance works under section 15(7),
- (d) protect the Forth Crossing works, or
- (e) protect or remove any flora or fauna, or to protect any building or other property, which may be affected by the carrying out of the Forth Crossing works.

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

Ministers may enter and take possession of any land (or any part of any land) in respect of which—

- (a) a notice to treat has been served in accordance with section 30, or
- (b) a general vesting declaration has been served in accordance with paragraph 4 of Schedule 15 to the 1997 Act (as applied by section 35).

#### **40 Notice of entry**

- (1) Ministers must give the owners and occupiers of land—
  - (a) at least 28 days' notice of their intention to enter land under section 37 or 39,
  - (b) at least 7 days' notice before first entering any land under section 38, and

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(c) at least 3 days' notice before any subsequent entry on that land under section 38.

(2) The notice must specify the purpose for which Ministers intend to enter the land.

(3) This section does not apply where Ministers consider that they need to enter land under section 38(d) or (e) urgently in order to protect the Forth Crossing works, any flora or fauna, or any building or other property.

#### **41 Use of land**

(1) Ministers may take such action on or in relation to land which they enter under this Part as they think appropriate for the purpose for which they entered the land.

(2) For example, Ministers may (if they think it appropriate)—

- (a) lay, leave or remove equipment on the land,
- (b) take persons or vehicles onto the land,
- (c) remove buildings, apparatus and vegetation from the land,
- (d) construct temporary works (including the provision of means of access) and buildings on the land,
- (e) store and manufacture materials on the land,
- (f) search, bore or remove samples from the land in order to discover—
  - (i) the nature of the subsoil,
  - (ii) the presence of minerals, or
  - (iii) the nature of any mining operations or other activity taking place beneath the surface.

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

(1) Ministers must take all reasonably practicable steps—

- (a) to remove temporary works from land entered under section 37 or 38,
- (b) to remedy any damage they cause while on such land, and
- (c) to leave such land so entered as effectually secured against unauthorised entry as they found it.

(2) But this section does not require Ministers to replace any building, apparatus or vegetation removed from the land.

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

Nothing in section 37 or 38 authorises Ministers to enter any house or other building (excluding any garden or other land belonging to the house or other building) which is for the time being occupied as a residence.

#### **44 Warrants authorising entry**

(1) A sheriff or justice of the peace may by warrant authorise Ministers to exercise a right conferred by this Part, if necessary using reasonable force, in accordance with the warrant.

(2) A warrant may be granted only if the sheriff or justice is satisfied, by evidence on oath—

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- (a) that there are reasonable grounds for exercising the right in relation to the land concerned,
- (b) that—
  - (i) entry to the land has been refused,
  - (ii) such a refusal is reasonably expected,
  - (iii) the land is unoccupied, or
  - (iv) the occupier is temporarily absent, and
- (c) except where the case is one of urgency, that Ministers have complied with the notice requirements imposed by section 40.

(3) A warrant must not authorise the use of force against an individual.

(4) A warrant expires—

- (a) when it is no longer required for the purpose for which it is granted, or
- (b) if earlier, on the expiry of such period as may be specified in it.

#### **45 Obstruction**

- (1) It is an offence intentionally to prevent or obstruct Ministers from doing anything which they are authorised to do by virtue of this Part.
- (2) Refusal to allow entry which is not authorised by warrant under section 44 does not constitute an offence under this section.
- (3) A person guilty of an offence under this section is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

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

- (1) Where Ministers take possession of land under section 37 or 39—
  - (a) any servitude or real burden over that land is unenforceable, and
  - (b) any development management scheme applying to the land is disapplied, for the period of possession.
- (2) “Period of possession” means the period beginning when Ministers enter and take possession and ending—
  - (a) where temporary possession is taken under section 37, when Ministers give up temporary possession,
  - (b) where possession is taken under section 39—
    - (i) on the registration of the relevant conveyance, or
    - (ii) where the notice to treat or general vesting declaration concerned is withdrawn or otherwise ceases to have effect.



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VALID FROM 03/02/2011

## PART 6

### COMPENSATION

#### 47 Land Compensation (Scotland) Act 1963

The application of the 1963 Act to the compulsory acquisition of land under section 22 is subject to the following modifications—

- (a) this Act is to be treated as a “special enactment” for the purposes of section 13(3)(a) of the 1963 Act,
- (b) section 14 of the 1963 Act does not apply,
- (c) this Act is to be treated as a “corresponding enactment” for the purposes of section 15(1) of the 1963 Act,
- (d) references in sections 22 and 23 of the 1963 Act to the date of service of the notice to treat are, where title to the land is to be taken by general vesting declaration, to be treated as references to the date on which the declaration is made,
- (e) this Act is to be treated as an “enactment” for the purposes of section 22(4) of the 1963 Act, and
- (f) the terms of this Act.

#### 48 Matters to be considered when assessing compensation

In assessing the compensation payable in respect of the compulsory acquisition of land under section 22, the Lands Tribunal must—

- (a) have regard to the extent to which any remaining contiguous land belonging to the same person may be benefited by the purpose for which the land is authorised to be acquired,
- (b) where a road is widened as part of the Forth Crossing works, set off against the value of the land to be acquired any increase in the value of other land belonging to the same person which will accrue to him by reason of the creation of a frontage to the road as widened,
- (c) take into account, and embody in its award, any undertaking given by Ministers as to the use to which the land, or any part of it, will be put.

#### 49 Matters to be ignored when assessing compensation

(1) In assessing the compensation payable in respect of the compulsory acquisition of land under section 22, the Lands Tribunal must not take into account—

- (a) any interest in land, or
- (b) any land value enhancement,

if it is satisfied that the interest in land was created, or that the work giving rise to the land value enhancement was carried out, for the purpose of obtaining compensation or increased compensation.

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- (2) A “land value enhancement” is any enhancement of the value of an interest in land by reason of any construction, improvement, alteration or other work carried out on—
- (a) the land acquired, or
  - (b) any other land with which the person to be compensated is, or was when the work was done, directly or indirectly concerned.

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

- (1) Compensation for a partial acquisition must include compensation for any loss sustained by the owner due to the severance of the house, building, factory or other land (in addition to the value of the interest to be acquired).
- (2) Where Ministers withdraw a notice to treat under section 32(4), the owner of the land which was subject to that notice is entitled to be compensated for any loss arising as a result of the giving and withdrawing of the notice (with any dispute about entitlement to, or amount of, such compensation to be determined by the Lands Tribunal).

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

- (1) In assessing the compensation payable in respect of the acquisition or extinguishment of any servitude or other right in pursuance of this Act, account is to be taken of any new servitude or real burden created by Ministers for purposes connected with the Forth Crossing works.
- (2) Any person entitled to enforce a personal real burden immediately before it is extinguished in pursuance of this Act is entitled to compensation from Ministers for any loss arising as a result of the extinguishment.
- (3) Any dispute about—
  - (a) a person's entitlement to such compensation, or
  - (b) the amount of such compensation,
 is to be determined by the Lands Tribunal in accordance with the 1963 Act as if it were a question of disputed compensation for the compulsory acquisition of land (and sections 8, 9, 11 and 12 of the 1963 Act accordingly have effect in relation to such a dispute so far as applicable and subject to any necessary modifications).

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

- (1) A person is entitled to compensation from Ministers for any loss arising as a result of Ministers taking action under section 10(1) in relation to a tree or shrub.
- (2) Any dispute about—
  - (a) a person's entitlement to compensation, or
  - (b) the amount of the compensation,
 is to be determined by the Lands Tribunal in accordance with the 1963 Act as if it were a question of disputed compensation for the compulsory acquisition of land (and sections 8, 9, 11 and 12 of the 1963 Act accordingly have effect in relation to such a dispute so far as applicable and subject to any necessary modifications).

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### **53 Compensation: stopping up**

- (1) A person with an interest in land is entitled to compensation from Ministers for any loss, or any disturbance in that person's enjoyment of such land, arising as a result of action taken by Ministers under section 14 or 15 in relation to that land.
- (2) Any dispute about—
  - (a) a person's entitlement to compensation, or
  - (b) the amount of the compensation,is to be determined by the Lands Tribunal in accordance with the 1963 Act as if it were a question of disputed compensation for the compulsory acquisition of land (and sections 8, 9, 11 and 12 of the 1963 Act accordingly have effect in relation to such a dispute so far as applicable and subject to any necessary modifications).
- (3) In assessing the compensation payable under this section, account must be taken of any new road or means of access which is provided as an alternative to the road or means of access which is stopped up.

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

- (1) A person with an interest in land is entitled to compensation from Ministers for any loss, or any disturbance in that person's enjoyment of such land, arising as a result of—
  - (a) Ministers entering land under section 37 or 38,
  - (b) Ministers taking action under section 41 in pursuance of such entry, or
  - (c) the operation of section 37(3) or 46 in relation to that land.
- (2) Any dispute about—
  - (a) a person's entitlement to compensation, or
  - (b) the amount of the compensation,is to be determined by the Lands Tribunal.
- (3) Such a dispute is, where temporary possession of land is taken under section 37, to be determined in accordance with the 1963 Act as if it were a question of disputed compensation for the compulsory acquisition of land (and sections 8, 9, 11 and 12 of the 1963 Act accordingly have effect in relation to such a dispute so far as applicable and subject to any necessary modifications).
- (4) In assessing such compensation, account must be taken of—
  - (a) the fact that entry is taken for a temporary period only, and
  - (b) whether any action taken under section 41 will have a permanent or temporary effect.
- (5) Any compensation payable under this section does not affect liability to pay compensation for loss arising from the Forth Crossing works under—
  - (a) section 6 of the Railways Clauses Consolidation (Scotland) Act 1845 (c.33) (as incorporated by section 21), or
  - (b) any other enactment,but compensation is not payable for the same matter under this section and that other enactment.

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### **55 Compensation: advance entry**

- (1) Where Ministers enter and take possession of land under section 39, compensation is payable—
  - (a) where the land is subject to a notice to treat, as if sections 83 to 89 of the 1845 Lands Act had applied and been complied with,
  - (b) where the land is subject to a general vesting declaration, as if the land had already vested in Ministers.
- (2) Nothing in section 39 or this section affects a person's rights to advance payment under section 48 of the Land Compensation (Scotland) Act 1973 (c.56).

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

- (1) Where a notice to treat is invalidated under section 34, any person to whom notice is to be given under subsection (3) of that section is entitled to compensation from Ministers for any loss arising as a result of the giving of the notice and its invalidation.
- (2) Any dispute about—
  - (a) a person's entitlement to compensation, or
  - (b) the amount of the compensation,
 is to be determined by the Lands Tribunal.
- (3) Interest is payable on any compensation due under this section, at the rate prescribed under section 40 of the 1963 Act, from the date on which the notice became invalid until the date of payment.

VALID FROM 18/03/2011

## **PART 7**

### **STATUTORY UNDERTAKERS**

#### **57 Apparatus affected by works**

- (1) The following provisions of the 1997 Act apply in relation to land acquired, appropriated or used (or about to be used) by Ministers for purposes connected with this Act as they apply in relation to land acquired or appropriated as mentioned in section 224(1) and 225(1) of the 1997 Act—
  - (a) sections 224 to 227, and
  - (b) all other provisions of the 1997 Act in so far as they apply for the purposes of those sections.
- (2) When so applying those provisions of the 1997 Act the references in sections 224(3) and 225(3) to the purpose of carrying out any development with a view to which land was acquired or appropriated are to be read as references to the purpose of carrying out the Forth Crossing works.
- (3) Those provisions of the 1997 Act, when applied by this section, are to apply in relation to the sewers and sewerage works of Scottish Water as they apply in relation to the apparatus of statutory undertakers.

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- (4) This section does not apply to apparatus as respects which section 142 or 143 of the 1991 Act applies (by virtue of section 58 of this Act or otherwise). The provisions of the 1997 Act mentioned in subsection (1) accordingly have no effect in relation to such apparatus.

## **58 Works for roads purposes**

For the purposes of sections 142 to 144 of the 1991 Act—

- (a) “works for road purposes” include all Forth Crossing works falling within paragraphs (a) to (d) of the definition of that term in section 145 of the 1991 Act,
- (b) “major works for roads purposes” include all Forth Crossing works executed in relation to a road which consists of or includes a carriageway which fall within any of paragraphs (a) to (d), (f) and (g) of section 145(3) of the 1991 Act, and
- (c) references to the authority executing works are, where those works are Forth Crossing works, to be read as references to Ministers.

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

- (1) An owner or occupier of premises supplied by apparatus removed in pursuance of section 57 is entitled to be compensated by Ministers in respect of reasonable costs incurred in connecting the premises to other apparatus from which a supply is given.
- (2) This section applies only in relation to apparatus of—
  - (a) Scottish Water,
  - (b) a statutory undertaker (within the meaning of section 214 of the 1997 Act) who—
    - (i) is a gas transporter (within the meaning of section 7(1) of the Gas Act 1986 (c.44)), or
    - (ii) holds a licence granted under section 6 of the Electricity Act 1989 (c.29), or
  - (c) a public communications provider (within the meaning of section 151(1) of the Communications Act 2003 (c.21)).
- (3) This section does not apply where the apparatus removed is a public sewer.

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

- (1) An owner or occupier of premises with drains which communicated with a public sewer removed in pursuance of section 57 is entitled to be compensated by Ministers in respect of reasonable costs incurred—
  - (a) in linking the drains with any other public sewer or a private sewage disposal plant, or
  - (b) in constructing a private sewage disposal plant and linking the drains to that plant.
- (2) An owner of a private sewer which communicated with a public sewer removed in pursuance of section 57 is entitled to be compensated by Ministers in respect of reasonable costs incurred—

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- (a) in linking the private sewer with any other public sewer or a private sewage disposal plan, or
- (b) in constructing a private sewage disposal plant and linking the private sewer to that plant.

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

- (1) A statutory undertaker (within the meaning of the 1984 Act)—
  - (a) has the same powers and rights as if this Act had not been enacted in respect of its apparatus which is under, in, on, over, along or across a road stopped up under section 14, and
  - (b) also has the power to—
    - (i) remove any such apparatus and place it (or other equivalent apparatus) in such other position as the undertaker has power to place it, or
    - (ii) place other equivalent apparatus in such a position.
- (2) A statutory undertaker must exercise the power conferred by subsection (1)(b) if the owner of the land concerned reasonably requests it do so.
- (3) Section 144 of the 1991 Act and regulations under that section apply to measures taken under subsection (1)(b) as they apply to measures mentioned in section 144 (with references to the authority to be read as references to Ministers).

VALID FROM 18/03/2011

## **PART 8**

### PLANNING PERMISSION, LISTED BUILDINGS AND CONSERVATION AREAS

#### **62 Planning permission**

- (1) Planning permission for the carrying out of the Forth Crossing works is deemed to have been granted by Ministers on an application referred to them under section 46 of the 1997 Act.
- (2) That planning permission expires 5 years after Royal Assent if the Forth Crossing works are not begun during that period.
- (3) The 1997 Act (except section 58 and Part 11) and all other enactments relating to planning permission apply accordingly.

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

- (1) Section 6 of the Listed Buildings Act does not apply to authorised listed building works.
- (2) A listed building enforcement notice served in relation to an affected listing building has no effect in so far as it requires the taking of steps which would be rendered wholly or substantially ineffective by authorised listed building works (and,

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accordingly, no such steps may be taken under section 38(1) of the Listed Buildings Act).

- (3) No works may be executed under section 49 of the Listed Buildings Act in relation to an affected listing building if those works would be rendered wholly or substantially ineffective by authorised listed building works.
- (4) Section 53 of the Listed Buildings Act does not apply to anything done for the purposes of carrying out authorised listed building works.
- (5) In this section—
  - “affected listed building” means—
    - (a) any listed building which was not such a building immediately before 1 January 2009, and
    - (b) the buildings specified in the table in schedule 11 (each being a listed building immediately before that date), and
  - “authorised listed building works” means—
    - (a) in relation to a listed building which was not such a building immediately before 1 January 2009, any works carried out in pursuance of this Act, and
    - (b) in relation to a listed building specified in the table in schedule 11, the works described in the third column of that table.

#### **64 Demolition in conservation areas**

Section 66 of the Listed Buildings Act does not apply to the demolition in pursuance of this Act of a building which—

- (a) is included in a conservation area after 1 January 2009 (but was not so included immediately before that date), and
- (b) is not a listed building.

#### **65 Interpretation of Part 8**

In this Part, “the Listed Buildings Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9). The following terms have the same meaning in this Part as they have in that Act—

- “building”
- “conservation area”
- “listed building”
- “listed building enforcement notice”

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VALID FROM 18/03/2011

## PART 9

### ENVIRONMENTAL MATTERS

#### 66 Mitigation of environmental impact

Ministers must do everything which is reasonably practicable in order to ensure that the environmental impact of the construction and operation of the Forth Crossing works is not worse than the residual impact identified in the environmental statement.

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

Ministers must do everything which is reasonably practicable in order to ensure that the Forth Crossing works—

- (a) are carried out in accordance with the code of construction practice, and
- (b) operate in accordance with the noise and vibration policy.

#### 68 Amendment of code of construction practice and noise and vibration policy

(1) Ministers may amend or replace—

- (a) the code of construction practice, or
- (b) the noise and vibration policy,

but an amended or replacement document must not reduce the standards of mitigation and protection provided for in the document being amended or replaced.

(2) Ministers must—

- (a) before amending or replacing either document, consult the bodies set out in subsection (3) and have regard to any views expressed by them, and
- (b) after amending or replacing either document—
  - (i) send those bodies a copy of the amended or replacement document, and
  - (ii) take such steps as they consider reasonable to bring the amendment or replacement to the attention of the public.

(3) The bodies referred to in subsection (2) are—

- (a) local authorities for the areas in which the Forth Crossing works are situated,
- (b) community councils in whose areas the Forth Crossing works are situated,
- (c) the relevant navigation authority,
- (d) the Forth Estuary Transport Authority,
- (e) the Scottish Environment Protection Agency, and
- (f) Scottish Natural Heritage.



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## **69 Protection of water environment**

Nothing in this Act exempts Ministers from having to carry out the Forth Crossing works in accordance with any regulations made under section 20(1) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3).

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

- (1) Section 60 of the Control of Pollution Act 1974 (c.40) applies to the Forth Crossing works with the following modifications—
  - (a) a ground for an appeal to a notice served under section 60 is that the works to which the notice relates are being, or are going to be, carried out in accordance with Ministers' duties in relation to noise in the code of construction practice, and
  - (b) if an appeal includes that ground—
    - (i) the notice is suspended (irrespective of any contrary statement included in the notice) until the appeal has been abandoned or decided by the sheriff, and
    - (ii) a sheriff must recall a notice served under section 60 if satisfied that the works to which the notice relates are being, or are going to be, carried out in accordance with Ministers' duties in relation to noise in the code of construction practice.
- (2) Section 61(9) of that Act does not apply to a consent given under section 61 of that Act in relation to Forth Crossing works.
- (3) Sections 63 to 67 of that Act do not apply to the Forth Crossing works.

## **71 Statutory nuisance: noise under the Environmental Protection Act 1990**

- (1) In this section “statutory nuisance” has the meaning given by section 79(1)(g) or (ga) of the Environmental Protection Act 1990 (c.43).
- (2) Noise from the carrying out of the Forth Crossing works does not constitute a statutory nuisance if the works are carried out in accordance with a consent given under section 61 of the Control of Pollution Act 1974 (c.40).
- (3) Part 3 of the Environmental Protection Act 1990 (c.43) applies to other noise from the carrying out of the Forth Crossing works which is alleged to be a statutory nuisance with the following modifications—
  - (a) a ground for an appeal to an abatement notice served under section 80 or 80A is that the works to which the notice relates are being, or are going to be, carried out in accordance with Ministers' duties in relation to noise in the code of construction practice,
  - (b) if an appeal includes that ground—
    - (i) the abatement notice is suspended (irrespective of any contrary statement included in the notice), and is not authority for any other action to be taken under Part 3, until the appeal has been abandoned or decided by the sheriff, and
    - (ii) the sheriff, if satisfied that works to which the notice relates are being or are going to be carried out in accordance with Ministers' duties in relation to noise in the code of construction practice, must

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- recall the abatement notice insofar as it relates to an alleged statutory nuisance, and
- (c) a sheriff must not make an order under section 82(2) or 82(12) on the basis of an alleged statutory nuisance if satisfied that works to which the application relates are being, or are going to be, carried out in accordance with Ministers' duties in relation to noise in the code of construction practice.

## PART 10

### MISCELLANEOUS

VALID FROM 03/02/2011

#### 72 Blighted land

Land which Ministers may acquire compulsorily under section 22 is to be treated as “blighted land” for the purposes of Chapter 2 of Part 5 of the 1997 Act.

VALID FROM 03/02/2011

#### 73 Certification of Parliamentary plans, etc.

- (1) Ministers must, as soon as practicable after this Act comes into force, submit copies of the following documents to the Clerk of the Scottish Parliament—
- (a) the book of reference,
  - (b) the Parliamentary plans, and
  - (c) the Parliamentary sections.
- (2) The Clerk must, if satisfied as to the accuracy of the submitted documents, certify them as being true copies of the documents of those names referred to in this Act.
- (3) A certified document is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

VALID FROM 03/02/2011

#### 74 Changes to Parliamentary plans or book of reference

- (1) The sheriff, if satisfied on a summary application by Ministers that the Parliamentary plans or the book of reference are inaccurate in their description of any land (or in their description and statement of the ownership or occupation of any land), must certify—
- (a) the respect in which the description or statement is inaccurate, and
  - (b) how that inaccuracy is to be corrected.

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- (2) The sheriff, if satisfied on a summary application that Ministers have entered into a binding obligation not to acquire certain land within the Act limits, must certify that the Parliamentary plans or the book of reference ought to be modified accordingly. An application may be made for the purposes of this subsection by—
  - (a) Ministers, or
  - (b) the owner of the land concerned.
- (3) Before making an application for the purposes of subsection (1) or (2), the applicant must give at least 10 days' notice of the proposed correction or modification to—
  - (a) the owner of the land or, as the case may be, Ministers, and
  - (b) any occupier of the land.
- (4) A certification must be—
  - (a) deposited in the office of the Clerk of the Parliament by the person who made the application, and
  - (b) kept by the Clerk with the Parliamentary plans or book of reference to which it relates.
- (5) After a certification is deposited, the Parliamentary plans or book of reference are to be treated as corrected or modified in accordance with it.
- (6) A summary application made under this section must be made to the sheriff for the sheriffdom in which the land concerned is situated.

VALID FROM 03/02/2011

## **75 Provision of information on the progress of the Forth Crossing works**

- (1) Ministers must do everything which is reasonably practicable to ensure that those persons referred to in subsection (2) are kept informed of the progress of the carrying out of the Forth Crossing works and the implications of the works for those persons.
- (2) The persons referred to in subsection (1) are—
  - (a) local authorities for the areas in which the Forth Crossing works are situated,
  - (b) community councils in whose areas the Forth Crossing works are situated,
  - (c) councillors representing wards in which the Forth Crossing works are situated,
  - (d) members of the Scottish Parliament representing the constituencies in which the Forth Crossing works are situated, and
  - (e) any other such persons, businesses or community representatives in the areas in which the Forth Crossing works are situated as Ministers consider appropriate.

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VALID FROM 03/02/2011

## 76 Formal communications

- (1) A “formal communication” means any notice (or counter-notice) or objection served or given under this Act.
- (2) A formal communication must be in writing (and, if sent by email, fax or other electronic means, is to be treated as being in writing only if it is legible and capable of being used for subsequent reference).
- (3) A formal communication is served or given if it is—
  - (a) hand delivered to the person concerned,
  - (b) sent, by first class post or by using a registered or recorded delivery postal service, in an envelope or package addressed—
    - (i) where sent to an individual, to the individual at the individual's principal place of business or usual or last known abode, and
    - (ii) where sent to a body, to the body at its registered or principal office,
  - (c) sent to the person concerned in any other way (including by email, fax or other electronic means) which the sender reasonably considers likely to cause it to be delivered on the same or next day, or
  - (d) served or given in accordance with subsection (5).
- (4) A formal communication may be served or given in a way described in subsection (3) (c) only if the person to whom it is sent has previously agreed to it being sent in that way (such agreement to be given by notifying the sender to that effect).
- (5) Where a person, having made reasonable inquiries, is unable to ascertain the name or address of a person in respect of whom a formal communication relating to land is to be served or given, the formal communication may be served or given by—
  - (a) addressing it to the person concerned by name or by a description of the person's interest in the land (for example: “the owner” or “the occupier”), and
  - (b) fixing to a building or object on, or to a conspicuous part of, the land to which the formal communication relates (or, where that is not practical, to a building or object near that land).
- (6) A formal communication is, unless the contrary is proved, to be treated as having been served or given—
  - (a) where hand delivered, on the day of delivery,
  - (b) where posted, on the day on which it would be delivered in the ordinary course of post,
  - (c) where sent in a way described in subsection (3)(c), on the day after it is sent, or
  - (d) where served or given in accordance with subsection (5), on the day on which it is fixed on or near the land to which it relates.

## 77 Ancillary provision

- (1) Ministers may, by order made by statutory instrument, make any supplementary, incidental, consequential, transitional, transitory or saving provision which they

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consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision of this Act.

- (2) Such an order may—
  - (a) make different provision for different purposes,
  - (b) modify this or any other enactment or any other instrument or document.
- (3) A statutory instrument containing such an order which makes supplementary, incidental or consequential provision may be made only if a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.
- (4) Any other statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.

VALID FROM 03/02/2011

## **78 Crown application**

- (1) The appropriate authority may agree to any provision of this Act applying (with or without modifications) in relation to—
  - (a) a Crown interest, or
  - (b) an interest in land which—
    - (i) is not itself a Crown interest, but
    - (ii) subsists in land in which there is a Crown interest.
- (2) In this section, “Crown interest” means an interest in land—
  - (a) belonging to Her Majesty in right of the Crown,
  - (b) belonging to an office-holder in the Scottish Administration or to a government department,
  - (c) held in trust for Her Majesty for the purposes of the Scottish Administration by such an office-holder, or
  - (d) held in trust for Her Majesty for the purposes of a government department.
- (3) In this section, “the appropriate authority”, in the case of—
  - (a) land belonging to Her Majesty in right of the Crown and forming part of the Crown estate, means the Crown Estate Commissioners,
  - (b) other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration who, or the government department which, has management of the land,
  - (c) land belonging to an office-holder in the Scottish Administration (or held by such an office-holder in trust for Her Majesty for the purposes of the Scottish Administration), means that office-holder,
  - (d) land belonging to a government department (or held in trust for Her Majesty for the purposes of a government department), means that government department.
- (4) Where Ministers are the appropriate authority, their agreement is deemed to be given for the purposes of this section when they exercise their powers under the relevant provision of this Act.

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(5) It is for Ministers to determine any question arising as to what authority is the appropriate authority in relation to any land; and their determination is final.

## 79 Interpretation

(1) In this Act, except where the contrary intention appears—

“the 1845 Lands Act” means the Lands Clauses Consolidation (Scotland) Act 1845 (c.19),

“the 1963 Act” means the Land Compensation (Scotland) Act 1963 (c.51),

“the 1984 Act” means the Roads (Scotland) Act 1984 (c.54),

“the 1991 Act” means the New Roads and Street Works Act 1991 (c.22),

“the 1997 Act” means the Town and Country Planning (Scotland) Act 1997 (c.8),

“Act limits” means—

(a) the land within the limits of deviation, and

(b) the land to be acquired or used,

“airport operator” has the same meaning as in section 82(1) of the Airports Act 1986 (c.31),

“ancillary works” has the meaning given by section 1(1)(b),

“book of reference” means the book of reference submitted to the Scottish Parliament as an accompanying document with the Bill for this Act, as may be corrected or modified by any revised book of reference submitted to the Parliament before the day on which the Bill for this Act is passed or in accordance with section 74,

“building” includes any structure or erection,

“carriageway” has the same meaning as in the 1984 Act,

“code of construction practice” means the document of that name which forms part of the environmental statement (as from time to time amended or replaced by any revised code submitted to the Parliament before the day on which the Bill for this Act is passed or under section 68),

“conveyance” includes—

(a) a disposition,

(b) a notice of title,

(c) a notarial instrument,

(d) a conveyance in the form set out in Schedule A to the 1845 Lands Act, and

(e) a general vesting declaration,

“development management scheme” has the same meaning as in section 71(3) of Title Conditions (Scotland) Act 2003 (asp 9),

“environmental statement” means the environmental statement submitted to the Scottish Parliament as an accompanying document with the Bill for this Act, as amended in accordance with this Act,

“the Forth Crossing” has the meaning given by section 1,

“Forth Crossing works” has the meaning given by section 1(2),

“Forth Estuary Transport Authority” means the authority of that name constituted by order made under section 69 of the Transport (Scotland) Act 2001 (asp 2) (see article 6 of the Forth Estuary Transport Authority Order 2002),

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“general vesting declaration” has the same meaning as in paragraph 1 of Schedule 15 to the 1997 Act,

“holder”, in relation to a real burden, has the same meaning as in the Title Conditions (Scotland) Act 2003 (asp 9),

“improvement”, in relation to a road or means of access, has the same meaning as it has in the 1984 Act in relation to roads,

“interest in land” includes any servitude or other right in or over land,

“land” includes buildings, land covered with water, and any interest in land,

“land to be acquired or used” means the land shown by that description on the Parliamentary plans,

“Lands Tribunal” means the Lands Tribunal for Scotland,

“limits of deviation” means the limits of deviation shown on the Parliamentary plans,

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

“Ministers” means the Scottish Ministers,

“navigation authority” has the same meaning as in the 1984 Act,

“noise” includes vibration,

“noise and vibration policy” means the document of that name which forms part of the environmental statement (as from time to time amended or replaced under section 68),

“notice to treat” has the meaning given in section 30(1),

“occupier” includes any person entitled to occupy the land,

“Parliamentary plans” means the plans submitted to the Scottish Parliament as accompanying documents with the Bill for this Act, as may be corrected or modified by any revised plans submitted to the Parliament before the day on which the Bill for this Act is passed or in accordance with section 74,

“Parliamentary sections” means the sections and cross-sections submitted to the Scottish Parliament as accompanying documents with the Bill for this Act, as may be corrected or modified by any revised sections or cross-sections submitted to the Parliament before the day on which the Bill for this Act is passed,

“partial acquisition” means an acquisition of part only of—

(a) any house, building or factory, or

(b) any land consisting of a house with a park or garden,

where a person is able to sell the whole of the house, building, factory or land,

“personal real burden” has the same meaning as in the Title Conditions (Scotland) Act 2003 (asp 9),

“principal works” has the meaning given by section 1(1)(a),

“proposed road” has the same meaning as in the 1984 Act,

“public road” has the same meaning as in the 1984 Act,

“railway” has the same meaning as in section 23(1) of the Transport and Works (Scotland) Act 2007 (asp 8),

“real burden” has the same meaning as in the Title Conditions (Scotland) Act 2003 (asp 9),

“registration”, in relation to a conveyance or other document, has the same meaning as in Title Conditions (Scotland) Act 2003 (asp 9),

“relevant railway undertaker” means—

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- (a) Network Rail Infrastructure Limited (company number 2904587) and any successor to that company, or as the case may be
- (b) any other person who holds a network licence (within the meaning of section 83(1) of the Railways Act 1993 (c.43)) in relation to the affected railway,

“road” has the same meaning as in the 1984 Act.

- (2) References to operation of the Forth Crossing works are references to the operation of the bridge, roads and structures constructed or improved by the Forth Crossing works (analogous expressions being construed accordingly).

## **80 Commencement**

- (1) The following provisions come into force on Royal Assent—
  - section 77
  - section 79
  - this section
  - section 81
- (2) Other provisions come into force on such day as Ministers may appoint by order made by statutory instrument.
- (3) Ministers must appoint the same day for sections 1 to 7 to come into force.
- (4) An order under subsection (2) may—
  - (a) make such transitional, transitory or saving provision as Ministers consider appropriate,
  - (b) appoint different days for different purposes.

## **81 Short title**

This Act is called the Forth Crossing Act 2011.



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**Changes to legislation:**

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