

FORTH CROSSING ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Powers to Enter and Use Land

Section 38 – Power to enter land for other purposes

138. 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 Act.
139. 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 Act.
140. 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\(7\)](#).
141. 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.