

FORTH CROSSING ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Land

Section 27 – Registration of servitudes and other rights

89. **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 Act 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.
90. 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 Act, 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 Act for the benefit of the scheme are not reduced in scope by the application of general Scots property law.
91. Subsection (1)(b) however does align with general Scottish 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.
92. 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 Act will be effective in terms of section 75 even if the servitude is only registered against the burdened property.