

FORTH CROSSING ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 – Miscellaneous

232. This Part includes general provisions concerning matters such as the definition of blight (as it relates to the Act) ([section 72](#)), the certification and adjustment of the Parliamentary plans and the book of reference ([sections 73 and 74](#)), the provision of information to specified persons ([section 75](#)), the procedures for issuing formal communications ([section 76](#)), ancillary provision ([section 77](#)), the application of the Act to the Crown ([section 78](#)) the interpretation of terms used within the Act ([section 79](#)), the date on which provisions are to come into force ([section 80](#)) and what the Act is to be called ([section 81](#)).

Section 72 – Blighted land

233. [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.
234. 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 £28,000¹; or
 - an owner-occupier of an agricultural unit,
- whose land is subject to compulsory purchase under the Act 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.

235. [Section 73](#) makes provision for the authentication of a copy of the book of reference, the plans and the sections that accompany the Act, to enable certified copies once the Act 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.
236. The Parliament's Guidance on Hybrid Bills makes it clear that the book of reference, the plans and the 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 Act. Since these documents are not published by the Parliament they will necessarily be a copy of the book of reference, plans

¹ The value is currently £28, 000 ([Town and Country Planning \(Limit of Annual Value\) \(Scotland\) Order 2005 \(SSI 2005/594\)](#)).

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.

237. 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

238. **Section 74** provides a procedure allowing changes to be made to the Parliamentary plans or book of reference after the Act has been passed. The provisions of this section have precedence in private Acts of the Scottish Parliament authorising works.
239. 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.
240. 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. 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.
241. 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.
242. This section ensures that binding obligations not to acquire land may be recorded by either party to that agreement and that implementation of the Act is not prevented by mistaken misdescriptions. The Act 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 Act could not be used in relation to that land.
243. Subsection (8) defines sheriff as the sheriff for the area in which land is situated.

Section 75 – Provision of information on the progress of the Forth Crossing works

244. This section places the Scottish Ministers under a duty to inform those persons, as specified in subsection (2), of the progress of the construction of the Forth Crossing works and the implications of the works for those persons.

Section 76 - Formal communications

245. 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 77 – Ancillary provision

246. 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. Subsection (2) provides that an order for the purposes of subsection (1) can make different provision for different purposes and may amend or repeal any other enactment. Subsection (3) requires that every order which makes supplementary, incidental or consequential provisions to be made under affirmative procedure. Any other statutory instrument containing such an order will, under subsection (4), be subject to a negative resolution.

Section 78 – Crown application

247. 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).
248. Subsection (1)(a) when read with subsection (2) allows a right belonging to the Crown to be affected by any provision in the Act with agreement from the appropriate authority.

Section 79 – Interpretation

249. This section defines terms used within the Act.

Section 80 – Commencement

250. 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 Act. Subsection (3) requires that the provisions on works and the manner of their construction in sections 1 to 7 will be commenced simultaneously.

Section 81 – Short title

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