

# FORTH CROSSING ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1 – Works

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

18. **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 Act 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.
19. 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.
20. 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**.
21. 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 Act'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 Act, is defined in subsection (2).