

# FORTH CROSSING ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 2 – Roads

42. This Part enables the Scottish Ministers to designate special and trunk roads ([section 11](#) and [section 12](#)) and to transfer roads to the management of the local roads authority ([section 13](#)). It also provides powers to stop up roads ([section 14](#)) and accesses ([section 15](#)), extinguish rights of way over a stopped up road or access ([section 16](#)) as well as setting out a process for determining the ownership of the solum of a stopped up road ([section 17](#)). Part 2 additionally, sets out what the Scottish Ministers must do when undertaking works in roads vested in a local roads authority and requires them to enter information in the Scottish Road Works Register when carrying out works in such roads ([section 18](#)). This Part also disapplies the need for consent from the local roads authority in certain circumstances but requires the Scottish Ministers to consult and consider any representation from the local roads authority ([section 19](#)) and references technical provisions ([section 20](#)) in the [Roads \(Scotland\) Act 1984 \(c.54\)](#) that are required to be disapplied to enable the appropriate operation of the Act.

#### *Section 11 – Special roads*

43. The term “special road” is used to describe a road which is prescribed for the use of certain classes of traffic<sup>1</sup>. Subsection (1) introduces [schedule 3](#) which lists those roads or parts of road that the Scottish Ministers may designate as being a special road. Subsection (2) provides the notification procedures that the Scottish Ministers must follow when designating a road under the Act as a special road.
44. Subsections (3) and (4) are technical provisions to ensure that a designation of special road status made under the Act can be treated as though it were made under section 7 of the [Roads \(Scotland\) Act 1984](#) and therefore attract the provisions of the 1984 Act as they relate to special roads. If a special road designation were to change, section 145 of the 1984 Act would need to be applied to modify or repeal [section 11](#). This ensures that any future re-designation of roads as special roads or otherwise can be done using the powers under section 7 of the 1984 Act, and is subject to the relevant procedures in Schedules 1 and 2 to that Act.

#### *Section 12 – Trunk roads*

45. [Section 12](#) provides for the designation of new roads and existing roads as trunk roads. The expression trunk road applies to roads within the trunk road network<sup>2</sup> for which the Scottish Ministers are responsible. [Section 12\(1\)](#) introduces [schedule 4](#) which provides details of all new roads which are to be trunk roads on the date that the section comes

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<sup>1</sup> A common type of special road is a motorway which is prescribed for traffic which falls within Classes I and II of schedule 3 to the [Roads \(Scotland\) Act 1984 \(c.54\)](#).

<sup>2</sup> The Trunk Road Network is a system of strategic routes of national importance that caters for the through movement of long distance traffic. The network includes motorways (“M”) and all-purpose (“A”) roads.

into force. The subsection also ensures that a proposed road identified in **schedule 3** also becomes a trunk road when the section is commenced.

46. Subsection (2) introduces **schedule 5** which lists existing roads (or parts of roads) currently maintained by local roads authorities. These roads will become trunk roads on a date determined by the Scottish Ministers and accordingly transfer to the Scottish Ministers.
47. Subsection (3) makes provision for a special road to become a trunk road on the date that the road is designated as being a special road if it is not already a trunk road under the Act or the Roads (Scotland) Act 1984. This subsection therefore ensures that any road designated as a special road will also be a trunk road.
48. The mechanism for notifying various parties when an existing road is to become a trunk road is set out in subsection (4).
49. Subsection (5) applies section 112 of the 1984 Act which provides that when a road transfers from a local roads authority to the Scottish Ministers all liabilities associated with the road (except for any loans or loan charges) will transfer at the time the road becomes a trunk road.
50. Subsection (6) enables a designation of a road as a trunk road made under the Act to be changed in the future under section 5 of the 1984 Act (which includes detrunking of roads).
51. Subsection (7) ensures a trunk road designated under the Act is included in the definition of a trunk road in the 1984 Act and therefore attracts the maintenance and other provisions of the 1984 Act as they relate to trunk roads.

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

52. The Scottish Ministers will need to create or improve a number of roads as part of the Forth Crossing works. Once created or improved the responsibility for some of these roads will transfer to the relevant local roads authority. Subsection (1) places the Scottish Ministers under an obligation to consult and consider representations from a local roads authority regarding works on roads that once built or improved are to be transferred to that local roads authority. Subsection (2) introduces **schedule 6**, which lists in column (3) the works associated with each road and in column (4) the relevant local roads authority.
53. Subsection (3) advises of the date of transfer of roads from the Scottish Ministers to the local roads authority. It is usual on any roads scheme undertaken by the Scottish Ministers under the Roads (Scotland) Act 1984 for any transfer of road responsibilities to occur on the 1 April following the date on which such a road is opened to traffic. The Act, for reasons of consistency, follows that approach.
54. Subsection (4) by attracting section 112 of the Roads (Scotland) Act 1984 ensures that on transfer of the road to the local roads authority particular liabilities attached to the construction of the road remain with the Scottish Ministers.

### ***Section 14 – Stopping up of roads***

55. Subsection (1) authorises the permanent stopping up<sup>3</sup> of each road as identified in **schedule 7** for the purposes of the Forth Crossing works. Without a power to stop up, existing roads would interfere with the construction and operation of the proposed scheme and provide public rights of way at inappropriate locations.
56. **Part 1 of schedule 7** provides a list of those roads to be stopped up where the Scottish Ministers have determined that they are satisfied that another reasonably convenient

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<sup>3</sup> “Stopping up” is a technical term for closing a road to traffic and terminating public rights of passage over it. A road may include a road, cycletrack, footway or footpath all of which have the status of a road.

road exists or that no alternative road is necessary. Subsection (2) introduces **Part 2 of schedule 7** which lists those roads that are to be stopped up but which may not be stopped up until a substitute road is open for public use or an alternative is provided.

57. Where a road is closed subsection (3) allows the Scottish Ministers to use the site for the Forth Crossing works. **Section 53** provides for the payment of compensation in respect of stopping up. Subsection (4) sets out that a road can not be permanently stopped up before the Scottish Ministers have notified the public of the closure date. Subsection (5) provides for the notification procedure for the opening of a new road as described in **Part 2 of schedule 7**.

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

58. Subsection (1) authorises the permanent stopping up of each access as identified in **schedule 8** for the purposes of the Forth Crossing works. Without a power to stop up, existing accesses could interfere with the construction and operation of the proposed scheme and provide public rights of passage at inappropriate locations.
59. **Part 1 of schedule 8** provides a list of those accesses to be stopped up where the Scottish Ministers have determined that they are satisfied that another reasonably convenient access exists or that no alternative access is necessary. Subsection (2) introduces **Part 2 of schedule 8** which lists those accesses that are to be stopped up but which may not be stopped up until a substitute access is open for use or an alternative is provided. Subsection (3) sets out that an access can not be permanently stopped up before the Scottish Ministers have notified the closure date to the owner and occupier of any land affected by the stopping up.
60. Subsection (4) sets out the notification procedure for the opening of the access as described in **Part 2 of schedule 8**.
61. If an owner disputes that the access is complete then under subsection (5) an objection can be made to the Scottish Ministers. That objection must be made within 28 days of receiving a completion notice from the Scottish Ministers. On receipt of the objection notice the Scottish Ministers have two options under subsection (6): they can withdraw the notice and carry out further works and then re-issue the completion notice; or they can, if they believe, for instance, that the access is ready for use, notify the owner that they are referring the matter to the Lands Tribunal for a determination. The latter option ensures that there is resolution of any dispute.
62. Subsection (7) places the Scottish Ministers under a duty to carry out reasonable maintenance of the substitute access for a specified period.
63. In order to provide a substitute access for an owner of land the Scottish Ministers may require access to land in order to create the access. There is no requirement to take that land permanently since the intention is to ensure that the access, once constructed, reverts to the ownership of the person or persons for whom the access was created. Therefore **section 37** provides within subsection (1) a power to enter and take land temporarily and under subsection (2) ensures that the land can be taken for a specified period.

### ***Section 16 – Extinction of rights of way***

64. This section provides that, in stopping up a road or an access under **section 14 or 15**, all rights of way over any part of that road or access are extinguished. Any person who suffers loss or disturbance by extinguishment of any private right of way under **section 14 or 15** shall be entitled to compensation under **section 53** of the Act.

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

65. The solum of a road means the soil or ground beneath the road upon which the road is built. A road vests in the appropriate roads authority but the roads authority does not

necessarily own the solum of the road. Often the roads authority will have a right to use, or authorise the use of the road by the public, or maintain the road without having ownership of the solum itself.

66. This section provides that where a road ceases to be used as a road, the solum of the road will vest in the owner of the land which adjoins the former road unless there is a person, who by reason of title, has a prior claim or the Scottish Ministers will become the adjoining land owner under the terms of subsection (1)(b). This section is consistent with the provisions that apply in relation to the vesting of solum of a stopped up road under the Roads (Scotland) Act 1984<sup>4</sup>.
67. Subsection (2) provides that the resolution of any dispute as to the vesting of the solum will be heard before a sheriff in whose sheriffdom the land is located.

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

68. This section relates to works on existing roads that are the responsibility of a local roads authority. Subsection (2)(a) places the Scottish Ministers under a duty to consult with and consider representations from the relevant local roads authority prior to commencing any works in such local roads. The Scottish Road Works Register is the national database system for the electronic transfer, retention and management of road works data and is the central tool for road works authorities and statutory undertakers (utility companies) to enter information to assist them in the planning and coordination of works on Scottish roads. Under subsection (2)(b) the Scottish Ministers must enter relevant information in the register in a manner which is in accordance with provisions of the New Roads and Street Works Act 1991 (c.22) which apply when they propose to carry out works on roads for which they are not the roads authority. Such action will ensure that statutory undertakers and the relevant local roads authority are appropriately informed of the timing and nature of works that are due to take place.
69. Subsection (3) sets out matters on the transfer of rights and liabilities between the Scottish Ministers and the local roads authority arising from carrying out the Forth Crossing works in local roads. Subsection (4) provides for an appropriate dispute resolution if those rights or liabilities are contested and will attract the provisions of the [Arbitration \(Scotland\) Act 2010 \(asp 1\)](#).

### ***Section 19 – Access to public roads***

70. It will be necessary for the Scottish Ministers to provide or improve access from existing public roads to land to be used for the Forth Crossing works or to land on which there is a requirement under [section 38](#) to construct or improve a new means of access. [Section 38](#) enables the Scottish Ministers to facilitate such access by the dropping of kerbs and similar works. The locations of these works are shown on the Parliamentary plans. [Section 19](#) allows the Scottish Ministers to carry out such works without having to seek consent from the local roads authority but places a duty on the Scottish Ministers to consult and consider any representations from the local roads authority prior to carrying out any work to provide or improve an access to or from a road for which the local roads authority are or will be responsible.

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

71. This section contains technical provisions which disapply specific provisions of the Roads (Scotland) Act 1984, which would otherwise apply to “roads”, in order to enable the appropriate operation of the Act. Subsection (1) is disapplied because specific provision has been made in [section 12](#) to ensure that a special road may be a trunk road. As the Act is providing the authority under [section 1](#) (for the Forth Crossing works, which include the construction of new roads), subsection (2) disapplies Part 3 of the 1984 Act and under subsection (3) certain other provisions of that Act. The manner

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<sup>4</sup> See section 115 of the [Roads \(Scotland\) Act 1984 \(c.54\)](#).

*These notes relate to the Forth Crossing Act 2011 (asp  
2) which received Royal Assent on 20 January 2011*

in which the works are to be carried out under the Act are covered by provisions in a number of sections (see for example **sections 2 to 10**) as well as procedures contained within accompanying documents (see the code of construction practice as defined in section 79). Sections 103 to 111 (acquisition of land) of the 1984 Act are disapplied by subsection (4) as **Part 3** of the Act makes specific provision for matters relating to which land may be acquired.