

# FORTH CROSSING ACT 2011

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 3 – Land

#### *Section 25 – Extinction of real burdens and servitudes etc.*

85. The purpose of [section 25](#) is to ensure that there are no servitudes or burdens on the land acquired by the Scottish Ministers that could conflict with the ability to carry out or to maintain the works. Accordingly, paragraph (a) provides for the automatic extinguishment of any servitude<sup>1</sup> or real burden<sup>2</sup> over land that is within the limits of deviation or is specified in [schedule 9](#). Paragraph (b) similarly provides for the automatic disapplication of any development management scheme<sup>3</sup> on the land acquired compulsorily. Any existing servitudes or real burdens or the application of the development management scheme will cease to apply to that land once the registration of the conveyance occurs. The section is qualified so that a servitude or burden acquired under [section 24](#) is not simultaneously extinguished under [section 25](#).

---

<sup>1</sup> A servitude is a right to make some limited use of another's property. Cusine and Paisley (*Servitudes*, published by W. Green, 1998, ISBN 9780414010888) define servitudes as "a class of legally enforceable and real rights of varying content, held by one person in his capacity as owner of one piece of ground (the dominant tenement) over another piece of ground (the servient tenement) in the vicinity, but in separate ownership by which some benefit is conferred on the dominant tenement."

<sup>2</sup> A real burden is an encumbrance on land constituted in favour of the owner of other land in that person's capacity as owner of that other land (section 1 of the [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#)). A real burden, as defined in section 1 of the 2003 Act, includes a personal real burden.

<sup>3</sup> A development management scheme is defined by section 71 of the 2003 Act as schemes or rules for the management of land as is set out in an order made, either, in consequence of that section; under section 104 of the [Scotland Act 1998 \(c.46\)](#) (which provides a power to make provision consequential on legislation of, or scrutinised by, the Scottish Parliament); or in relation to a particular development, that scheme as applied to the development.