

FORTH CROSSING ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Land

Section 26 – Persons under a disability may grant servitudes, etc.

86. Section 7 of the 1845 Lands Act permits certain persons (described as being under a disability as they are legally disabled from doing something) to convey existing rights in land and to dispose of land. However, those persons are legally disabled from being able to do other things such as creating a new right in their land. Provision is accordingly required to ensure that it will always be possible for the Scottish Ministers to acquire new rights under [section 22](#) or [section 23](#) from persons such as trustees.
87. [Section 26](#) allows persons under a legal disability to grant to the Scottish Ministers a servitude or right over their land. If they remained unable to do this people in this position could only sell the whole of the land and the Scottish Ministers could be left with land they did not need for the purposes of the Act.
88. There is a caveat, which is that rights in relation to water cannot be granted if others have an interest in that water. Where several landowners have interests in the same water, the law treats them as sharing a common interest: one of them cannot therefore do something that affects the interest of others. The provision within [section 26](#) addresses this matter.