

FORTH CROSSING ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Taking Title to Land

Section 31 – Partial acquisitions using notice to treat procedure

107. The Act disapplies, by virtue of section 21(1), section 90 of the 1845 Lands Act, which sets out the procedures where an acquiring authority wishes to acquire part only of certain types of property required for the works. Section 90 of the 1845 Lands Act provides that the owner of a house, building or factory cannot be compelled to sell only part of his or her property if he or she is willing to sell the whole. This would enable a landowner to insist on the acquisition of the whole of his or her property, however large, even where the part proposed for compulsory acquisition is only a very small fraction of the whole.
108. **Section 31** together with **section 32** replaces section 90 of the 1845 Lands Act so as to enable the Scottish Ministers to acquire only part of a property where this can be done without material detriment to the rest of the property and in the case of a park or garden without also seriously affecting the amenity or convenience of the house. Provision made by **sections 31 and 32**, in place of section 90 of the 1845 Lands Act, is common in private Scottish Acts¹.
109. Subsection (1) provides that where a notice to treat is served under **section 30** the person on whom the notice is served may serve an objection within 28 days, objecting to the sale of part of the land. If no objection is made within 28 days the landowner is obliged to sell the land detailed in the notice to treat.
110. Subsection (2) sets out that an objection must be served on the Scottish Ministers and that it must contain a statement that the owner is willing to sell the whole of the land and identify that land.
111. Subsection (3) sets out the procedure that the Scottish Ministers must follow when dealing with an objection. Subsection (3)(a) provides that where the Scottish Ministers agree to take the land which is the subject of the objection, the notice to treat is deemed to apply to the land in the objection as well as in the original notice to treat. Subsection (3)(b) enables the Scottish Ministers on receipt of the objection to withdraw the notice to treat and accordingly notify the objector. The reasons for withdrawing the notice may be varied and could include, for instance, the Scottish Ministers withdrawing the notice to treat so that another notice to treat can be issued in different terms, for instance, with lesser land being taken as a result of informal agreement of both parties. Subsection (3)(c) provides that where the Scottish Ministers do not agree to take the whole land as specified within the objection the Scottish Ministers must refer the question as to what land the owner shall be required to sell to the Lands Tribunal for Scotland and accordingly notify the objector. The Lands Tribunal must consider the referral in the terms as set out in **section 32**.

¹ See, for example, section 26 (acquisition of part of certain properties) of the [Edinburgh Airport Rail Link Act 2007 \(asp 16\)](#).

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

112. If within 3 months of receipt of an objection the Scottish Ministers fail to agree, withdraw or refer that objection the notice to treat will be deemed as withdrawn, under subsection (4).