

FORTH CROSSING ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Powers to Enter and Use Land

Section 39 – Advance entry on land to be acquired

142. The 1845 Lands Act permits entry on land under compulsory purchase powers only after full payment has been made (section 83) or after the body with the compulsory purchase powers has deposited in a bank as security either the compensation claimed by the landowner or a sum representing the value of the land as valued by a valuer appointed by the sheriff (section 84). Sections 85 and 86 require the money to remain in the bank as a security to be distributed as directed by the sheriff. Section 87 imposes financial penalties on entering land without complying with the procedures, and in the event of a landowner refusing entry even after full payment has been made, the only recourse is to apply to the sheriff for a possession order. The procedures are cumbersome and time consuming. **Section 21** of the Act has disapplied these provisions and the purpose of **section 39** of the Act is to provide for a modern procedure to apply so as to ensure that the works are not delayed by negotiations with landowners about the compensation to which they are entitled. As landowners are to be obliged to give up their land in any event, the amount of compensation is a completely separate issue from possession of the land.
143. It can be seen from the explanation to **section 35** that a general vesting declaration could take at least three months to take effect (that is two months for the serving of the compulsory purchase order and a further 28 days for the declaration to take effect). To wait three months under the general vesting process or conceivably longer in respect of a notice to treat or a general vesting declaration which is subject to a notice of objection to severance initiated by the land owner could have implications for the construction schedule of the scheme. So as to ensure that the delivery of the scheme is not unduly affected **section 39** permits the Scottish Ministers to enter and take possession of land before they have title to that land.
144. **Section 39** specifies that the Scottish Ministers may only enter and take possession of land on which they have either served a notice to treat (**section 30**) or made a general vesting declaration (**section 35**)