

FORTH CROSSING ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Statutory Undertakers

189. This Part sets out the rights and responsibilities of the providers of public utilities ([sections 57 and 58](#)), the compensation procedures for owners or occupiers where reconnection to utilities is required ([sections 59 and 60](#)) and what may happen to apparatus in a stopped up road ([section 61](#)).

Section 57 – Apparatus affected by works

190. [Section 57](#) concerns the rights of providers of certain utilities, including water, gas, electricity, sewerage and telecommunications services to maintain their supplies through apparatus that will or may be affected by the Forth Crossing works. These providers are frequently referred to as “statutory undertakers” and that is the expression used in sections 224 to 227 of the [Town and Country Planning \(Scotland\) Act 1997 \(c.8\)](#). Those sections provide a statutory code that applies in certain cases where the use of land for planning purposes makes it necessary to extinguish statutory undertakers’ rights in relation to apparatus.
191. The code provides for the acquiring authority to require the relocation of apparatus of the statutory undertakers and for the statutory undertaker to object to the proposal with disputes being determined by the Scottish Ministers. Compensation for relocation is payable by the acquiring authority under section 232, 233 and 235 of the 1997 Act.
192. The extinguishment of statutory undertakers’ rights has precedence when constructing roads¹ or the construction of other works authorised by Acts of the Scottish Parliament².
193. [Section 57\(1\)](#) provides that provisions in respect of the 1997 Act may apply in respect of land that is to be acquired (whether compulsorily or voluntarily), appropriated or used or about to be used for the purposes of the Act. Such land may include land that is already owned by the Scottish Ministers. Subsection (1)(a) specifically applies sections 224 to 227 and subsection (1)(b) applies all other provisions of sections of the 1997 Act that are needed to ensure the effective operation of sections 224 to 227, including provisions in respect of compensation.
194. Subsection (2) limits the purpose for which sections 224 to 227 apply to the carrying out of the Forth Crossing works.
195. Subsection (3) ensures that Scottish Water as suppliers of sewers and sewage disposal works are included within the term of statutory undertakers for the purpose of the Act. Under the 1997 Act Scottish Water would only be caught as being a statutory undertaker for the supply of water.

¹ Section 134 of the [Roads \(Scotland\) Act 1984 \(c.54\)](#), which applies and extends the relevant sections within the 1997 Act.

² Section 34 of the [Glasgow Airport Rail Link Act 2007 \(asp 1\)](#).

196. Section 142 and 143 of the [New Roads and Street Works Act 1991 \(c.22\)](#) provide for a separate code governing works in roads and which will apply to certain of the Forth Crossing works. Accordingly, subsection (4) provides that [section 57](#) of the Act and therefore the provisions of the 1997 Act have no effect in relation to apparatus affected by such works.

Section 58 – Works for roads purposes

197. Part 4 of the New Roads and Street Works Act 1991 sets out matters for dealing with road works in Scotland. Sections 142 to 144 of the 1991 Act, set out what an authority executing “works for road purposes” (including “major works for road purposes”) shall do in relation to apparatus that is likely to be affected by the works. Section 145 of the 1991 Act defines works and major works for road purposes. Under the requirements of section 142 the authority must take all reasonable steps to give the statutory undertaker to whom the apparatus belongs reasonable facilities to monitor the work and comply with any reasonable requirements for the protection of the apparatus or securing access.
198. Where apparatus is likely to be affected by major works for roads purposes, section 143 sets out what the authority must do, along with the undertaker, to deal with apparatus, and section 144 sets out how the costs of executing the measures that are necessary are to be shared between the authority and the undertaker. The [Road Work \(Sharing of Costs of Works\) \(Scotland\) Regulations 2003 \(SSI 2003/509\)](#) have been made under the powers in section 144 of the 1991 Act and specify how the cost sharing between the authority and the undertaker is to be regulated.
199. [Section 58](#) defines what Forth Crossing works are to be considered works for road purposes, under paragraph (a) or, under paragraph (b), major works for road purposes, so the relevant regime under the 1991 Act applies.
200. Paragraph (c) ensures that the Act can properly apply the provisions of the 1991 Act.

Section 59 – Compensation for removal of water, gas, electricity or communications apparatus

201. Under section 134(3) of the [Roads \(Scotland\) Act 1984 \(c.54\)](#) where apparatus of a statutory undertaker is removed under section 224 of the Town and Country Planning (Scotland) Act 1997 any person who is an owner or occupier of premises to which a supply (e.g. gas, electricity etc.) was given from that apparatus is entitled to be compensated for having to connect the premises to other apparatus from which a supply is given. The purpose of [section 59](#) is to ensure that the principle of compensating for a loss of supply applies under the Act.
202. Accordingly subsection (1) enables an owner or occupier to seek compensation from the Scottish Ministers for reconnection of a supply, provided that the supply was provided by apparatus of those described within subsection (2).

Section 60 – Compensation for removal of public sewer

203. This section is similar to section 135 of the Roads (Scotland) Act 1984 which relates to compensation in respect of connection to, or construction of, sewers or a sewage disposal plant. [Section 60\(1\)](#) provides that, where a public sewer is removed, an owner or occupier is entitled to compensation in respect of reasonable costs incurred in linking to other sewers or a private disposal plant or under subsection (1)(b) constructing a sewage disposal plant and linking to that plant.
204. [Section 60\(2\)](#) makes provision in a scenario in which the owner of a private sewer is entitled to compensation in respect of reasonable costs incurred in linking to public sewers or a private disposal plant or, under subsection (2)(b), constructing a private disposal plant and linking to that plant.

Section 61 – Apparatus in stopped up roads

205. **Section 61** provides that statutory undertakers preserve their rights in relation to or over any apparatus that may be placed under, in, on, over, along or across a road stopped up under **section 14**. In this respect the statutory undertakers are treated in a similar manner to that which applies under section 12 of the Roads (Scotland) Act 1984. Subsection (1)(a) preserves those rights whilst subsection (1)(b) provides a power to statutory undertakers to remove and reposition that apparatus. Subsection (2) however places a duty on statutory undertakers to exercise their power to remove and relocate equipment if the owner of the land of the stopped up road so reasonably requests. **Section 17** makes provision for ownership of the solum of a stopped up road.
206. Subsection (3) ensures that the costs of relocating apparatus in consequence of subsection (2) will be shared between the statutory undertaker and the Scottish Ministers according to the regime for determining and sharing costs in section 144 of the New Roads and Street Works Act 1991 and any regulations made under that Act.