

FORTH CROSSING ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 – Planning Permission, Listed Buildings and Conservation Areas

207. This Part deems planning permission for the works ([section 62](#)) and provides for the relaxation of controls in respect of listed buildings so that work affecting those properties can proceed without requiring further separate authority ([sections 63 to 65](#))

Section 62 – Planning permission

208. [Section 62](#) provides for planning permission to be deemed to have been granted for the Forth Crossing works authorised by the Act as though an application made to the planning authority had been called in and granted by the Scottish Ministers under section 46 of the [Town and Country Planning \(Scotland\) Act 1997 \(c.8\)](#).
209. Subsection (2) provides that this planning permission will lapse if the Forth Crossing works have not commenced within five years of Royal Assent

Section 63 – Relaxation of listed building controls

210. As explained above, the Act will deem planning permission for the Forth Crossing works to have been granted. It is appropriate that all planning issues should be considered at the same time. This section accordingly disapplies a separate statutory requirement to obtain listed building consent so that the Act effectively ensures that all works can progress without the need for additional planning consents which might otherwise impact on the execution of the works.
211. Subsection (1) refers to the Listed Buildings Act which is defined in [section 65](#) as the [Planning \(Listed Buildings and Conservation Areas\) \(Scotland\) Act 1997 \(c.9\)](#). This is the Act that requires consent (called listed building consent) for works and operations affecting buildings that are listed under the Act as being of special architectural or historic importance. Subsection (1) disapplies section 6 of the Listed Buildings Act in respect of works that are specified in column (3) of [schedule 11](#) to the Act in relation to the listed buildings that are set out in column (1) of the schedule. It is also disapplied in respect of any Forth Crossing works to a building that has been listed after 1 January 2009. Under section 6 works to demolish, alter or extend a listed building are restricted unless authorised. The disapplication of section 6 ensures that the works as specified in [schedule 11](#) to the Act, or Forth Crossing works to a building listed after 1 January 2009, can proceed without the need to acquire listed buildings consent.
212. Subsection (2) ensures that a listed building enforcement notice does not apply where the work required by the notice would be rendered ineffective by Forth Crossing works to the listed building concerned. Under section 38(1) of the Listed Buildings Act the local authority has the power to do the things required by an enforcement notice if the recipient of the notice fails to comply. This subsection also ensures that the local authority cannot take such a step if the same circumstances apply.

213. Subsection (3) prevents the local planning authority from exercising its powers under section 49 of the Listed Buildings Act in relation to those properties listed in **schedule 11**, or a building listed after 1 January 2009, to carry out urgent preservation works if those works would be rendered ineffective, or substantially ineffective, by the Forth Crossing works.
214. Subsection (4) disapplies section 53 of the Listed Buildings Act in relation to the works specified in column (3) of **schedule 11**, or Forth Crossing works that may be carried out on a building listed after 1 January 2009. Section 53(1) of the Listed Buildings Act makes it a criminal offence to do or permit anything which causes or is likely to result in damage to a listed building. The works that may be done to a listed building under the Act may amount to damage giving rise to an offence. Section 53(3) provides that section 53(1) does not apply to the execution of works authorised by planning permission or for which listed building consent has been given. As the Act provides for the effective grant of planning permission by virtue of **section 62** and the effect of **section 63** and the inclusion of **schedule 11** is effectively to grant listed building consent for specified works, section 53 of the Listed Building Act ought not to apply to the Forth Crossing works.
215. Subsection (5) applies definitions of “affected listed buildings” and “authorised listed building works” for the purposes of **section 63**.

Section 64 – Demolition in conservation areas

216. This section disapplies the provisions of section 66 (control of demolition in conservation areas) of the Listed Buildings Act from any building (which is not a listed building), which may be affected by Forth Crossing works authorised under the Act and which may be included in a conservation area designated after 1 January 2009. The section therefore permits the demolition of a building within a conservation area without requiring consent.

Section 65 – Interpretation of Part 8

217. This section defines terms used within this Part.