

FORTH CROSSING ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Roads

Section 15 – Stopping up of means of access

58. Subsection (1) authorises the permanent stopping up of each access as identified in **schedule 8** for the purposes of the Forth Crossing works. Without a power to stop up, existing accesses could interfere with the construction and operation of the proposed scheme and provide public rights of passage at inappropriate locations.
59. **Part 1 of schedule 8** provides a list of those accesses to be stopped up where the Scottish Ministers have determined that they are satisfied that another reasonably convenient access exists or that no alternative access is necessary. Subsection (2) introduces **Part 2 of schedule 8** which lists those accesses that are to be stopped up but which may not be stopped up until a substitute access is open for use or an alternative is provided. Subsection (3) sets out that an access can not be permanently stopped up before the Scottish Ministers have notified the closure date to the owner and occupier of any land affected by the stopping up.
60. Subsection (4) sets out the notification procedure for the opening of the access as described in **Part 2 of schedule 8**.
61. If an owner disputes that the access is complete then under subsection (5) an objection can be made to the Scottish Ministers. That objection must be made within 28 days of receiving a completion notice from the Scottish Ministers. On receipt of the objection notice the Scottish Ministers have two options under subsection (6): they can withdraw the notice and carry out further works and then re-issue the completion notice; or they can, if they believe, for instance, that the access is ready for use, notify the owner that they are referring the matter to the Lands Tribunal for a determination. The latter option ensures that there is resolution of any dispute.
62. Subsection (7) places the Scottish Ministers under a duty to carry out reasonable maintenance of the substitute access for a specified period.
63. In order to provide a substitute access for an owner of land the Scottish Ministers may require access to land in order to create the access. There is no requirement to take that land permanently since the intention is to ensure that the access, once constructed, reverts to the ownership of the person or persons for whom the access was created. Therefore **section 37** provides within subsection (1) a power to enter and take land temporarily and under subsection (2) ensures that the land can be taken for a specified period.