

FORTH CROSSING ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Land

Section 28 – Minerals

93. **Section 28** prevents the Scottish Ministers from acquiring the mineral rights to any land that they may acquire compulsorily under **section 22** unless the rights concern mines or minerals that affect the carrying out of the Forth Crossing works or have been expressly included within any conveyance transferring the land.
94. This section is required as **section 21(2)** of the Act does not incorporate section 70 of the 1845 Railways Act which provides for the exclusion of minerals from land purchased.
95. **Section 21(2)** does however incorporate sections 71 to 78 (as originally enacted)¹ of the 1845 Railways Act. These sections place restrictions on a person with rights to work the minerals beneath the land that has been acquired and also on working minerals within 40 yards of the land. The person seeking to work those minerals would have to give the authority thirty days notice. If the authority, which for the purposes of the Act is the Scottish Ministers, is of the view that the working of the mines (or part of them) will damage their works and the Scottish Ministers are willing to make compensation for the minerals (or any part left unworked), the Scottish Ministers can issue a counter notice to the person with rights to work the minerals advising that person of the intention of the Scottish Ministers to pay compensation. If minerals are worked in contravention of that counter-notice, the person must make good any damage caused at their own expense; the Scottish Ministers can also make good any damage and recover any costs from the party who carried out the works.
96. If these sections are not incorporated it would mean that the Scottish Ministers would not have the benefit of what is effectively a 40 yard exclusion zone of mineral working around the Forth Crossing works. The lack of a right to determine an exclusion zone could have potential consequences for the Forth Crossing works, for instance, in ensuring the stability of the ground.
97. These provisions are generally applied in respect of compulsory purchases: the **Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42)** provides that a compulsory purchase order may make provision for the incorporation of sections 71 to 78 of the 1845 Railways Act as originally enacted. The **Roads (Scotland) Act 1984 (c.54)**, which is the principal Act for the construction of roads, also includes at section 110(5) of that Act provisions for the incorporation of sections 71 to 78 as originally enacted of the 1845 Railways Act.

¹ Sections 71 to 78 of the 1845 Railways Act were modified by the **Mines (Working Facilities and Support) Act 1923 (c.20)**. The amended version is applied to railways whereas the original version is employed for other compulsory purchases.