

FORTH CROSSING ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 – Compensation

Section 51 – Compensation: servitudes and other rights

172. There are at least four situations where compensation may be payable for the acquisition or extinguishment or disapplication of servitudes or other rights. Those situations are:
- (i) where a right is directly purchased permanently or temporarily (see [section 24](#));
 - (ii) where land is purchased, rights in land are extinguished or disapplied and the owner's other land (benefited property) suffers (see [section 25](#));
 - (iii) where land is purchased, rights in land are extinguished under [section 25](#) and the holder of a personal real burden suffers loss; and
 - (iv) where a right is extinguished on land that the Scottish Ministers currently own.
173. Compensation for acquisition or extinguishment of a servitude or right under [section 22](#) (see categories (i) and (iv) above) is provided for by [section 51](#).
174. Compensation for category (ii) above is provided by virtue of section 6 of the 1845 Railways Act which makes provision whereby a benefited proprietor is entitled to compensation where their interest in land has been injuriously affected when a servitude or other right is extinguished. Section 6 applies by incorporation under [section 21\(2\)](#) of the Act.
175. Compensation for category (iii) above is provided by [section 51\(2\)](#) which ensures that any person who loses the right to enforce a personal real burden is entitled to compensation.
176. [Section 51](#) ensures compensation is payable in respect of the circumstances set out above and provides that as part of the determination of the compensation payable that account is taken of any new servitude or real burden created by the Scottish Ministers. For illustration, this means that a person could be compensated for the loss of a right to do something on their land and further compensated because the Scottish Ministers have taken a right to do something such as to provide access to Forth Crossing works over that person's land thus further affecting the land owner's enjoyment of his or her land.
177. Subsection (3) sets out the process for resolving any dispute as to entitlement to compensation or the amount of any compensation.