

FORTH CROSSING ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Taking Title to Land

101. This Part deals with the procedures associated with the acquisition of title to land. There are two standard procedures commonly known as “notice to treat” and “general vesting declaration” and provisions for each procedure (see respectively [sections 30 to 34](#) and [sections 35 and 36](#)) are contained within the Act
102. The **notice to treat** procedure involves the serving of a special notice by the person authorised to purchase the land to the landowner offering to correspond with the landowner with a view to agreeing compensation. The special notice is known as a “notice to treat”. The person authorised to acquire the land, in this case the Scottish Ministers, may enter the land before the compensation is agreed and the land has been formally transferred by serving a “notice of entry” on the owner. If the owner is unwilling to sell the land or cannot be traced then the Scottish Ministers can acquire the land by executing a deed, called a “notarial instrument”. This provision is to ensure that the landowner cannot hold up the scheme unreasonably by refusing to sell and that the scheme can go ahead even if the landowner cannot be traced. The level of compensation will be the same whether acquisition is conducted by means of a “notarial instrument” or with the agreement of the owner.
103. The process for assessing compensation is contained within the 1845 Lands Act and the [Land Compensation \(Scotland\) Act 1963 \(c.51\)](#). If a dispute should arise about the amount of compensation it is referred to the Lands Tribunal for Scotland which is a specialist tribunal for dealing with such disputes.
104. The procedure known as **general vesting declaration** is discussed at the explanation of [section 35](#).

Section 30 – Service of a notice to treat

105. [Section 30](#) sets the procedure that is to apply for the serving of a notice (called a notice to treat) on each landowner whose land is required. The procedure is set out in section 17 of the 1845 Lands Act which has been incorporated within the Act under section 21(1).
106. Under subsection (2) the notice to treat must be served in the manner prescribed under [section 75](#) (Formal communications), provide a description of the land and ensure that any person receiving or reading the notice will know that it is an important document.

Section 31 – Partial acquisitions using notice to treat procedure

107. The Act disapplies, by virtue of section 21(1), section 90 of the 1845 Lands Act, which sets out the procedures where an acquiring authority wishes to acquire part only of certain types of property required for the works. Section 90 of the 1845 Lands Act provides that the owner of a house, building or factory cannot be compelled to sell only part of his or her property if he or she is willing to sell the whole. This would enable

a landowner to insist on the acquisition of the whole of his or her property, however large, even where the part proposed for compulsory acquisition is only a very small fraction of the whole.

108. **Section 31** together with **section 32** replaces section 90 of the 1845 Lands Act so as to enable the Scottish Ministers to acquire only part of a property where this can be done without material detriment to the rest of the property and in the case of a park or garden without also seriously affecting the amenity or convenience of the house. Provision made by **sections 31 and 32**, in place of section 90 of the 1845 Lands Act, is common in private Scottish Acts¹.
109. Subsection (1) provides that where a notice to treat is served under **section 30** the person on whom the notice is served may serve an objection within 28 days, objecting to the sale of part of the land. If no objection is made within 28 days the landowner is obliged to sell the land detailed in the notice to treat.
110. Subsection (2) sets out that an objection must be served on the Scottish Ministers and that it must contain a statement that the owner is willing to sell the whole of the land and identify that land.
111. Subsection (3) sets out the procedure that the Scottish Ministers must follow when dealing with an objection. Subsection (3)(a) provides that where the Scottish Ministers agree to take the land which is the subject of the objection, the notice to treat is deemed to apply to the land in the objection as well as in the original notice to treat. Subsection (3)(b) enables the Scottish Ministers on receipt of the objection to withdraw the notice to treat and accordingly notify the objector. The reasons for withdrawing the notice may be varied and could include, for instance, the Scottish Ministers withdrawing the notice to treat so that another notice to treat can be issued in different terms, for instance, with lesser land being taken as a result of informal agreement of both parties. Subsection (3)(c) provides that where the Scottish Ministers do not agree to take the whole land as specified within the objection the Scottish Ministers must refer the question as to what land the owner shall be required to sell to the Lands Tribunal for Scotland and accordingly notify the objector. The Lands Tribunal must consider the referral in the terms as set out in **section 32**.
112. If within 3 months of receipt of an objection the Scottish Ministers fail to agree, withdraw or refer that objection the notice to treat will be deemed as withdrawn, under subsection (4).

Section 32 – Severance disputes (notice to treat procedure): Lands Tribunal

113. **Section 32** sets out the matters that the Lands Tribunal for Scotland must consider and the outcome of the objection as a consequence of their determination.
114. Subsection (1) provides that on receipt of a referral from the Scottish Ministers the Tribunal must consider whether some or all of the land within the notice to treat can be acquired without material detriment to the rest of the property and in the case of a park or garden without also seriously affecting the amenity or convenience of the house.
115. Subsection (2) provides that if the Tribunal determines that the land in the notice to treat can be taken without material detriment and in the case of a park or garden without also seriously affecting the amenity or convenience of the house then the owner is obliged to sell the land that the Scottish Ministers wish to acquire.
116. Subsection (3) provides that the Tribunal may determine that (a) only some of the land within the notice to treat can be acquired or (b) that some or all of the land within the notice to treat can be acquired together with some or all of the additional land identified in the objection. Under this subsection a notice to treat can be deemed to include other land whether or not that land is subject to compulsory purchase under the Act.

¹ See, for example, section 26 (acquisition of part of certain properties) of the [Edinburgh Airport Rail Link Act 2007 \(asp 16\)](#).

117. Under subsection (4) the Scottish Ministers have 6 weeks within which to withdraw the notice to treat and notify the owner rather than proceed with the acquisition of land as determined by the Lands Tribunal. The six week period is necessary to enable the Scottish Ministers to assess any consequential implications for the design and operation of the scheme as a result of the Lands Tribunal's determination.
118. Matters of compensation in respect of land are addressed under **Part 6**.

Section 33 – Severance of agricultural land

119. The scheme impacts on agricultural land, particularly south of the Forth. **Section 33** ensures that **sections 31 and 32** do not apply in relation to agricultural land², which is covered by specific provisions within sections 49 (notice to treat in respect of part of agricultural land) and section 50 (effect of counter-notice under section 49) of the **Land Compensation (Scotland) Act 1973 (c.56)**.

Section 34 – Notice to treat: time limit

120. Section 17 of the 1845 Lands Act requires an acquiring authority to give notice of its intention to take land by way of service of a notice to treat. That section is incorporated with the Act by virtue of **section 21**. In relation to compulsory purchase orders, section 78 of the **Planning and Compensation Act 1991 (c.34)** limits the life of a notice to treat served under section 17 to three years from the date on which it is served. Section 78 only applies for the purposes of any compulsory purchase orders and a corresponding 3 year time limit is therefore applied in the Act by **section 34**.
121. Subsection (1) provides that the time limit shall be three years unless any of the reasons listed in paragraphs (a) to (c) apply.
122. Subsection (2) allows the three year time limit period to be extended for any period of time provided that the Scottish Ministers and the owner of the land both agree to that extension.
123. Subsection (3) ensures that the Scottish Ministers must inform the relevant person when a notice to treat becomes invalid because it has not been served either within 3 years or within such period as agreed.

Section 35 – General vesting declarations

124. **Section 35** attracts the “general vesting declaration” procedure to the Act. This is a compulsory acquisition procedure which is an alternative to serving notice to treat and notices of entry on every owner. The procedure is set out in Schedule 15 to the **Town and Country Planning (Scotland) Act 1997 (c.8)** and provides a more convenient way to acquire a large number of parcels of land in different ownership.
125. The procedure involves sending a compulsory purchase notice of the intention to execute a “vesting declaration”. That notice is served on various specified parties who own or have an interest in the land which is to be subject to compulsory purchase. Those persons have two months in which to respond to the notice. On the expiry of that period of two months, or such longer period as may be specified in the notice, the acquiring authority, which for the purposes of the Act will be the Scottish Ministers, can execute a declaration in the prescribed form (the prescribed forms are set out in the schedules to the **Compulsory Purchase of Land (Scotland) Regulations 2003 (S.S.I 2003/446)**) vesting the land in the Scottish Ministers from such period as may be specified in the declaration.
126. Once the declaration has been made it does not take effect until at least 28 days notice of its making has been served on every owner or occupier. At that point the declaration is treated as if it had been a notice to treat and the Scottish Ministers, as the acquiring

² Agricultural land is defined in section 80(1) (general interpretation) of the **Land Compensation (Scotland) Act 1973 (c.56)**.

*These notes relate to the Forth Crossing Act 2011 (asp
2) which received Royal Assent on 20 January 2011*

authority, have the power to enter and take possession of the land without serving notices of entry.

127. To enable the general vesting declaration procedure to apply within the Act specific provision is required and this is given by subsection (1) which provides the power for the Scottish Ministers to make a general vesting declaration for land that they wish to acquire compulsorily. That land, under [section 22](#), is land within the limits of deviation and land identified in [schedule 9](#).
128. Subsection (2) clarifies how the general vesting procedure of the Town and Country Planning (Scotland) Act 1997 should be applied for the purposes of the Act.

Section 36 – Duty to publicise general vesting declarations

129. [Section 36](#) sets out the procedure for publicising the making of a general vesting declaration and notifying those persons whose land or interest in land is affected by the declaration.
130. Subsection (1)(a) places a duty on the Scottish Ministers to publish a compulsory purchase notice in at least one local newspaper circulating in the area where land or an interest in land is to be acquired. The content of the compulsory purchase notice is described in subsection (2).
131. Subsection (1)(b) provides that a compulsory purchase notice, together with a copy of the Act once enacted and a copy of the Parliamentary plans, which will show the geographic impact of the scheme, must be issued to those persons specified. Explanations of a real burden and a development management scheme are provided in the explanation to [section 25](#).