

FORTH CROSSING ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Powers to Enter and Use Land

Section 40 – Notice of entry

145. **Section 40** sets out the notice arrangements which the Scottish Ministers must apply when seeking entry to land. It ensures that landowners will know when the Scottish Ministers intend to enter their land and for what purposes.
146. When the Scottish Ministers wish to take temporary possession of land for a purpose set out in **schedule 10** or authorised by **section 37(1)(b)** or wish to take advance entry to land under **section 39** they must give at least 28 days notice. This time period is so that the owner or occupier can undertake any arrangements that they need to make in consequence of the possession of their land by the Scottish Ministers. An example might be to make necessary arrangements, in an agricultural setting, to relocate stock.
147. Subsection (1)(b) requires the Scottish Ministers to give on the first occasion seven, and thereafter under subsection (1)(c) three, days' notice to the owner or occupier where entry is to be taken under **section 38**. The shorter time given for entry under **section 38** is consistent with the timescale that applies under section 140 of the Roads (Scotland) Act 1984 for the purposes of surveying, boring, inspecting and the like. To ensure that the land owner is fully apprised of the activities that are to be carried out on his or her land the Scottish Ministers must under subsection (2) provide details in the notice of the purposes for which they wish to enter land.
148. It may not be practical to give advance notice to a landowner that entry is required for a particular purpose under **section 38**. Subsection (3), accordingly, allows a disapplication of the noticing procedures if the Scottish Ministers require access urgently and the purposes of entry are for the purposes of protecting the interests listed.