



# Forth Crossing Act 2011

## 2011 asp 2

### PART 5

#### POWERS TO ENTER AND USE LAND

#### **37 Temporary possession of land**

- (1) Ministers may, when carrying out the Forth Crossing works, enter and take temporary possession of any land specified in columns (1), (2) and (3) of schedule 10—
  - (a) for the purpose specified in respect of that land in column (4) of that schedule, or
  - (b) for any other purpose which Ministers consider necessary or expedient for the purposes of, in connection with, or in consequence of, the works specified in respect of that land in column (5) of that schedule.
- (2) Ministers may remain in temporary possession of the land for—
  - (a) up to one year after the day on which they consider that the works in relation to which they took possession of the land are completed, or
  - (b) such longer period as may be agreed with the owner of the land.
- (3) Where the land is subject to a lease (including a sub-lease), the lease is terminated on the date on which Ministers first enter the land.

#### **38 Power to enter land for other purposes**

Ministers may, for any purposes connected with this Act, enter any land in order to—

- (a) survey the land,
- (b) carry out archaeological or other investigations,
- (c) carry out maintenance works under section 15(7),
- (d) protect the Forth Crossing works, or
- (e) protect or remove any flora or fauna, or to protect any building or other property, which may be affected by the carrying out of the Forth Crossing works.

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*Status: This is the original version (as it was originally enacted).*

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### **39 Advance entry on land to be acquired**

Ministers may enter and take possession of any land (or any part of any land) in respect of which—

- (a) a notice to treat has been served in accordance with section 30, or
- (b) a general vesting declaration has been served in accordance with paragraph 4 of Schedule 15 to the 1997 Act (as applied by section 35).

### **40 Notice of entry**

- (1) Ministers must give the owners and occupiers of land—
  - (a) at least 28 days' notice of their intention to enter land under section 37 or 39,
  - (b) at least 7 days' notice before first entering any land under section 38, and
  - (c) at least 3 days' notice before any subsequent entry on that land under section 38.
- (2) The notice must specify the purpose for which Ministers intend to enter the land.
- (3) This section does not apply where Ministers consider that they need to enter land under section 38(d) or (e) urgently in order to protect the Forth Crossing works, any flora or fauna, or any building or other property.

### **41 Use of land**

- (1) Ministers may take such action on or in relation to land which they enter under this Part as they think appropriate for the purpose for which they entered the land.
- (2) For example, Ministers may (if they think it appropriate)—
  - (a) lay, leave or remove equipment on the land,
  - (b) take persons or vehicles onto the land,
  - (c) remove buildings, apparatus and vegetation from the land,
  - (d) construct temporary works (including the provision of means of access) and buildings on the land,
  - (e) store and manufacture materials on the land,
  - (f) search, bore or remove samples from the land in order to discover—
    - (i) the nature of the subsoil,
    - (ii) the presence of minerals, or
    - (iii) the nature of any mining operations or other activity taking place beneath the surface.

### **42 Duty to remedy damage etc.**

- (1) Ministers must take all reasonably practicable steps—
  - (a) to remove temporary works from land entered under section 37 or 38,
  - (b) to remedy any damage they cause while on such land, and
  - (c) to leave such land so entered as effectually secured against unauthorised entry as they found it.
- (2) But this section does not require Ministers to replace any building, apparatus or vegetation removed from the land.

#### **43 No power to enter homes**

Nothing in section 37 or 38 authorises Ministers to enter any house or other building (excluding any garden or other land belonging to the house or other building) which is for the time being occupied as a residence.

#### **44 Warrants authorising entry**

- (1) A sheriff or justice of the peace may by warrant authorise Ministers to exercise a right conferred by this Part, if necessary using reasonable force, in accordance with the warrant.
- (2) A warrant may be granted only if the sheriff or justice is satisfied, by evidence on oath—
  - (a) that there are reasonable grounds for exercising the right in relation to the land concerned,
  - (b) that—
    - (i) entry to the land has been refused,
    - (ii) such a refusal is reasonably expected,
    - (iii) the land is unoccupied, or
    - (iv) the occupier is temporarily absent, and
  - (c) except where the case is one of urgency, that Ministers have complied with the notice requirements imposed by section 40.
- (3) A warrant must not authorise the use of force against an individual.
- (4) A warrant expires—
  - (a) when it is no longer required for the purpose for which it is granted, or
  - (b) if earlier, on the expiry of such period as may be specified in it.

#### **45 Obstruction**

- (1) It is an offence intentionally to prevent or obstruct Ministers from doing anything which they are authorised to do by virtue of this Part.
- (2) Refusal to allow entry which is not authorised by warrant under section 44 does not constitute an offence under this section.
- (3) A person guilty of an offence under this section is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

#### **46 Suspension of real burdens and servitudes etc.**

- (1) Where Ministers take possession of land under section 37 or 39—
  - (a) any servitude or real burden over that land is unenforceable, and
  - (b) any development management scheme applying to the land is disapplied, for the period of possession.
- (2) “Period of possession” means the period beginning when Ministers enter and take possession and ending—
  - (a) where temporary possession is taken under section 37, when Ministers give up temporary possession,

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- (b) where possession is taken under section 39—
  - (i) on the registration of the relevant conveyance, or
  - (ii) where the notice to treat or general vesting declaration concerned is withdrawn or otherwise ceases to have effect.