
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 4

The Lerwick Harbour Revision Order 2015

PART III

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

18.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79 (1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made under section 82(2) of that Act if the defender shows—

- (a) that the nuisance relates to premises used by the Authority for the purposes of or in connection with the exercise of the powers conferred by this order with respect to the construction or maintenance of the work; and
- (b) that the nuisance is—
 - (i) attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level), of the Control of Pollution Act 1974; or
 - (ii) a consequence of the construction, maintenance or use of the work and that it cannot be reasonably avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) shall not apply where the consent relates to the use of premises by the Authority for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the construction or maintenance of the work.