
STATUTORY INSTRUMENTS

2016 No. 772

The York Potash Harbour Facilities Order 2016

PART 6

MISCELLANEOUS AND GENERAL

Defences to proceedings

33.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁾ (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 is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development 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), of the Control of Pollution Act 1974⁽²⁾; or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development and that it cannot reasonably be avoided; or
 - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) In proceedings for an offence under any of the provisions mentioned in paragraph (3) it is a defence for the undertaker to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

- (3) The provisions referred to in paragraph (2) are—
- (a) article 19 (lights on tidal works etc. during construction);
 - (b) article 20 (provision against danger to navigation); and
 - (c) article 21 (permanent lights on tidal works).

(1) 1990 c. 43.

(2) 1974 c. 40. Section 65 was amended by section 132(2) of, and Schedule 7 to, the Building Act 1984 (c. 55) and section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to section 65 which are not relevant to this Order.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(4) If in any case the reliance on the defence provided by paragraph (2) involves the allegation that the commission of the offence was due to the act or default of another person, the undertaker is not, without leave of the court, entitled to rely on that defence unless, before the period of 7 clear days preceding the hearing, it has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in its possession.

(5) 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) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.