

FORTH CROSSING ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9 – Environmental Matters

Section 71 – Statutory nuisance: noise under the Environmental Protection Act 1990

229. **Section 71** sets out modifications of the Environmental Protection Act 1990 in relation to noise which is alleged to be a statutory nuisance. Subsection (2) provides that noise which is caused by the Forth Crossing works in accordance with a consent granted under section 61 of the Control of Pollution Act 1974, cannot be a statutory nuisance as defined in section 79(1) of the Environmental Protection Act 1990. The effect of this is that a statutory nuisance abatement notice cannot be served under section 80 of the 1990 Act and a summary application to abate a statutory nuisance under section 82 of the 1990 Act cannot be successful, if the conditions set out in a consent given by a local authority under section 61 of the 1974 Act are met.
230. Otherwise the statutory nuisance provisions of the Environmental Protection Act 1990 apply with modifications. The general grounds of appeal against a notice under section 80 of the 1990 Act are set out in regulation 2 of the Statutory Nuisance (Appeals) (Scotland) Regulations 1996. Section 71(3)(a) provides an additional ground of appeal for the Forth Crossing works: that the works to which a notice served under section 80 or 80A of the 1990 Act were or were going to be carried out in accordance with the Scottish Ministers' duties as provided for at **section 67** of the Act to carry out the works in accordance with Code of Construction Practice. Section 71(3)(a) means that the Scottish Ministers' contractor will have to demonstrate compliance with noise elements of the Code of Construction Practice.
231. Subsection (3)(b)(i) provides that a notice will be suspended pending determination of the appeal and subsection (3)(b)(ii) provides that the sheriff must recall the notice if he or she determines that the grounds of the appeal are met. Paragraph (c) applies the same "code of construction practice" defence in relation to a summary application raised under section 82 of the 1990 Act.