

# FORTH CROSSING ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 9 – Environmental Matters**

218. This Part sets out duties to mitigate the impact of the scheme on the environment (**section 66**), to comply with environmental undertakings (**section 67**) and the process to amend or replace those undertakings (**section 68**). It also ensures compliance with existing consent regimes protecting the water environment (**section 69**) and sets out procedures in respect of the control of noise (**section 70**) and what matters may constitute a statutory nuisance (**section 71**)

#### ***Section 66 – Mitigation of environmental impact***

219. **Section 66** imposes a positive duty on the Scottish Ministers regarding the environmental impacts of the Forth Crossing works (see **section 1**). The environmental statement (as defined in section 79) proposes certain mitigation measures. The effect of these measures will be to prevent or reduce environmental impacts being caused by the works. This section obliges the Scottish Ministers to do everything that is reasonably practicable to ensure that the environmental impacts of the construction or operation of the Forth Crossing works are no worse than the residual impacts identified in the environmental statement (the residual impacts are measurable environmental impacts).

#### ***Section 67 – Compliance with code of construction practice and noise and vibration policy***

220. **Section 67** imposes a duty on the Scottish Ministers to ensure compliance with the code of construction practice and noise and vibration policy, contained within the environmental statement. The test of ensuring compliance is everything which is reasonably practicable.

#### ***Section 68 – Amendment of code of construction practice and noise and vibration policy***

221. **Section 68** enables the Scottish Ministers to amend or replace the code of construction practice or the noise and vibration policy. Subsection (1) ensures that an amendment to or replacement of those documents must not reduce the standards of mitigation or protection provided for in an earlier version.
222. Subsection (2) sets out a process of notification and consultation with specified bodies which the Scottish Ministers must follow before making an amendment to or replacement of the code of construction practice or the noise and vibration policy. The specified bodies which are listed at subsection (3) are not obliged to respond to any consultation but, if they do so, the Scottish Ministers must have regard to their views. Copies of any amended or replaced documents must be sent to the bodies consulted and reasonable steps taken to bring them to the attention of the public.

### ***Section 69 – Protection of water environment***

223. The Forth Crossing works include works that will include activities which need to be controlled in order to protect the water environment and such controls are applied by regulations made under the [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#). **Section 69** ensures that, where appropriate, authorisation will be sought under those regulations and the relevant works will be carried out in accordance with that authorisation.

### ***Section 70 – Control of noise: Control of Pollution Act 1974***

224. The carrying out of the Forth Crossing works will inevitably cause a high level of noise and vibration. The regulation of construction noise is dealt with by the [Control of Pollution Act 1974 \(c.40\)](#) and the [Environmental Protection Act 1990 \(c.43\)](#). The regime for control of construction noise under the 1974 Act is operated by local authorities. The Forth Crossing works will affect more than one local authority area.
225. Under section 60 of the 1974 Act a local authority can serve a notice on persons responsible for construction in order to impose requirements on the way that the construction is carried out. An appeal can be made against such a notice and the existing grounds of appeal include provision that the local authority did not have regard to some or all of the provisions in section 60(4) of the 1974 Act, including the provision that before serving a notice the local authority shall have regard to the need for ensuring best practicable means were employed to minimise noise.
226. **Section 70(1)** applies section 60 of the 1974 Act and allows under paragraph (a) an additional ground of appeal for the Scottish Ministers' contractor for the Forth Crossing works to any notice served by a local authority to control noise or vibration on a construction site under section 60. The section provides that the grounds of appeal could also include that the works were, or were going to be, carried out in accordance with the Scottish Ministers' duties in relation to noise in the Code of Construction Practice. Accordingly, the provision introduces a ground of appeal that the works to which a notice served under section 60 of the 1974 Act were, or were going to be, carried out in accordance with authorisation at **section 67** of the Act to carry out the works in accordance with Code of Construction Practice.
227. Subsection (1)(b) sets out further matters where such an appeal is made. The notice is suspended until the appeal is determined or abandoned. The sheriff must recall the notice if he or she determines that the grounds of the appeal are met
228. Subsection (2) disapplies subsection 61(9) of the 1974 Act which has the effect that if a consent is granted under section 61 in respect of any Forth Crossing work, that consent will not contain a statement that the consent is not a defence to any proceedings under section 82 of the 1990 Act.

### ***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

*These notes relate to the Forth Crossing Act 2011 (asp  
2) which received Royal Assent on 20 January 2011*

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.