
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 4

The Lerwick Harbour Revision Order 2015

PART III

MISCELLANEOUS AND GENERAL

Defence of due diligence

17.—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2) it shall be a defence for the Authority to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) The provisions referred to in paragraph (1) are—

- (a) article 11 (lights on tidal works during construction);
- (b) article 12 (permanent lights on tidal works); and
- (c) article 14 (provision against danger to navigation).

(3) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Authority shall not, without leave of the court, be entitled to rely on that defence unless, within a period of 7 clear days before 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.

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.

Environmental requirements

19.—(1) No work shall be commenced until the Scottish Ministers have, following consultation with the Scottish Environment Protection Agency and Scottish Natural Heritage, approved an environmental management plan for the work.

(2) Subject to paragraph (3) in constructing the works, the Authority shall act in accordance with—

- (a) the commitments given in the Environmental Statement being the Environmental Statement dated October 2014 together with the Non-technical summary and the Appendices to the Environmental Statement, a copy of which was submitted with the application made for this Order to the Scottish Ministers and a further copy of which has been deposited at the principal office of the Authority situated at the port; and
- (b) the approved environmental management plan for the works.

(3) Nothing in paragraph (2) shall exempt the Authority from fulfilling any requirement imposed on the Authority by any rule of law or which arises from any commitment which is binding on the Authority.

Borrowing powers

20.—(1) The Authority may from time to time borrow, by any methods and on such terms as it sees fit, such sums of money as it thinks necessary for the purposes of meeting its obligations in carrying out its statutory powers, duties and functions; and where moneys are borrowed by the Authority under this Article, the Authority may, if it sees fit, borrow those moneys upon the security of some or all of its assets or of some or all of its revenues or of some or all of both its assets and revenues; and the Authority may effect such arrangements as it sees fit to mitigate against any financial risk incurred for the purposes of meeting such obligations.

(2) The provisions of sections 3, 4 and 5 of the Lerwick Harbour Revision Order 1982 are hereby repealed.

Amendment of the Lerwick Harbour (Miscellaneous Provisions) Order Confirmation Act 1975

21. The provisions of sections 7 and 11 of the Lerwick Harbour (Miscellaneous Provisions) Order Confirmation Act 1975(1) are hereby repealed.

Saving for Commissioners of Northern Lighthouses

22. Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of the Commissioners of Northern Lighthouses.

Saving for other consents etc.

23. The carrying out of any works or operations pursuant to this Order is subject to the Authority obtaining any consent, permission or licence required under any other enactment.

(1) 1975 c.xxv.

Crown Rights

24.—(1) Nothing in this Order shall affect prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to that generality nothing contained in the Order shall authorise the Authority to take, use, enter upon or in any manner interfere with any land or interest in land, or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions.