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STATUTORY INSTRUMENTS

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**2010 No. 2020**

**The Port of Bristol (Deep Sea Container Terminal) Harbour Revision Order 2010**

**PART 5**

**MISCELLANEOUS AND GENERAL**

**Defence to proceedings in respect of statutory nuisance**

**26.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(1)</sup> (summary proceedings by persons aggrieved by statutory nuisances) 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, and no fine shall be imposed, under section 82(2) of that Act<sup>(2)</sup> if the defendant shows—

- (a) that the nuisance relates to premises used by the Company 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 works and that the nuisance is 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 sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974; or
  - (b) that the nuisance is a consequence of the construction, maintenance or use of the work and that it cannot reasonably be avoided.
- (2) The following provisions of the Control of Pollution Act 1974—
- (a) 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); and
  - (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded)<sup>(3)</sup>,

shall not apply where the consent relates to the use of premises by the Company 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 works.

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(1) 1990 c. 43. Section 82(1) is amended by the Environment Act 1995 (c. 25), section 107 and Schedule 17, paragraph 6.  
(2) Section 82(2) is amended by the Noise and Statutory Nuisance Act 1993 (c. 40), section 5 and by the Environment Act 1995, section 107 and Schedule 17, paragraph 6.  
(3) Sections 61(9) and 65(8) are amended by the Environment Act 1995 (c. 25), section 120 and Schedule 24 and the Environmental Protection Act 1990 (c. 43) section 162 and Schedule 15, paragraph 15.