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STATUTORY INSTRUMENTS

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**2012 No. 416**

**The Dover Harbour Revision Order 2012**

**PART 3**

**MISCELLANEOUS AND GENERAL**

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

**16.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(1)</sup> (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, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the Board 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 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 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(2)</sup>; or
  - (c) 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, namely—
- (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);

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

**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 Board to prove that they 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—

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(1) 1990 c. 43.

(2) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the [Environmental Protection Act 1990, c.25](#). There are other amendments to the 1974 Act which are not relevant to this Order.

article 11 (lights on tidal works during construction);  
article 12 (permanent lights on tidal works); and  
article 13 (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 Board shall not, without leave of the court, be entitled to rely on that defence unless, within a period of seven clear days before the hearing, they have 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 their possession.

### **Saving for Trinity House**

**18.** Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

### **Crown rights**

**19.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the Board to take, use, enter upon or in any manner interfere with, any land, hereditaments, or rights of whatsoever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and forming part of the Crown Estate, without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) 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 and shall be deemed to have been given in writing where it is sent electronically.

### **Saving for other consents, etc.**

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

### **For protection of Secretary of State for Transport**

**21.** The provisions of the Schedule to this Order shall have effect.