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STATUTORY INSTRUMENTS

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**2007 No. 1440**

**The Mersey Docks and Harbour Company (Seaforth  
River Terminal) Harbour Revision Order 2007**

**PART 3**

**MISCELLANEOUS AND GENERAL**

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

**17.**—(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 (statutory nuisances and inspections) no order shall be made, and no fine shall be imposed, under section 82(2) of that Act if the defendant shows 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

- (a) 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, or a consent given under section 61 or 65, of the Control of Pollution Act 1974<sup>(2)</sup>; or
- (b) that the nuisance is a consequence of the construction, maintenance or use of the works 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 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 work.

**Defence of due diligence**

**18.**—(1) In proceedings for an offence under article 11, 12 or 15 it is a defence for the Company to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) 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 Company shall not, without leave of the court, be entitled to rely on that defence unless, within a period of seven clear

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(1) 1990 c. 43.  
(2) 1974 c. 40.

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.

### **Saving for Trinity House**

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

### **Crown rights**

**20.**—(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 Company 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 under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) belonging to Her Majesty in right of Her Majesty’s Duchy of Lancaster without the consent in writing of the Chancellor of the Duchy of Lancaster; 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) above may be given unconditionally or subject to such conditions and upon such terms as may be considered necessary or appropriate.

### **Disapplication of regulation 60 of the Conservation (Natural Habitats &c) Regulations 1994**

**21.**—(1) Regulation 60 of the Conservation (Natural Habitats &c) Regulations 1994<sup>(3)</sup> (“the Habitats Regulations”) shall not apply to any planning permission which relates to the works and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995<sup>(4)</sup> for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

(2) Paragraph (1) does not apply if and to the extent that the works—

- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 48 of the Habitats Regulations in connection with the making of this Order; and
- (b) are not subject to a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

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<sup>(3)</sup> S.I. 1994/2716.

<sup>(4)</sup> S.I. 1995/418.