STATUTORY INSTRUMENTS

2011 No. 1072

The Network Rail (Hitchin (Cambridge Junction)) Order 2011

PART 6

MISCELLANEOUS AND GENERAL

Noise

Defence to proceedings in respect of statutory nuisance

41.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**1**) (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 may be imposed, under section 82(2) of that Act if the defendant shows—

(a) that the nuisance relates to premises used by Network Rail for the purposes of or in connection with the exercise of powers conferred by this Order with respect to works; 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, or a consent given under section 61 or 65, of the Control of Pollution Act 1974(**2**).

(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 Network Rail for the purposes of or in connection with the exercise of powers conferred by this Order with respect to works.

(3) The provisions of this article are without prejudice to the application to the authorised railway of section 122 of the Railways Act 1993(**3**) (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

(**1**)   1990 c. 43.
(**2**)   1974 c. 40.
(**3**)   1993 c. 43. As amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

[DfT 00005RL]