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STATUTORY INSTRUMENTS

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**2005 No. 120**

**The Merseytram (Liverpool City Centre to Kirkby) Order 2005**

**PART 7**

MISCELLANEOUS AND GENERAL

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

**73.**—(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 Merseytravel for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to 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, 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 operation of the works authorised by this Order 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 Merseytravel for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article are without prejudice to any rule of common law having similar effect.

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