
STATUTORY INSTRUMENTS

2015 No. 129

**The A160/A180 (Port of Immingham
Improvement) Development Consent Order 2015**

PART 7

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

36.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990⁽¹⁾ in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act, no order is to be made, and no fine may be imposed, under section 82(2)⁽²⁾ of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the Secretary of State for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development 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 section 65 (noise exceeding registered level), of the Control of Pollution Act 1974⁽³⁾; or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 and section 65(8) of that Act, do not apply where the consent relates to the use of premises by the Secretary of State for the purposes of or in connection with the construction or maintenance of the authorised development.

(1) 1990 c. 43. There are amendments to this sub-section which are not relevant to this Order.
(2) Subsection 82(2) was amended by section 5(1) and (2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection but none are relevant to this Order.
(3) 1974 c. 40. Section 61 and 65 were amended by section 162 of, and paragraph 15(1), (3) and (4) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43); there are other amendments to sections 61 and 65 but none are relevant to this Order.