

SCHEDULES

SCHEDULE 26

NOISE

Defences to proceedings relating to statutory nuisance

- 3 (1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by person aggrieved by statutory nuisance) in relation to—
- (a) a statutory nuisance falling within section 79(1)(g) of that Act (noise emitted from premises), or
 - (b) a statutory nuisance falling within section 79(1)(ga) of that Act (noise emitted by vehicle, machinery or equipment in a street),
- no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that sub-paragraph (2) or (3) applies.
- (2) This sub-paragraph applies if the nuisance—
- (a) relates to premises or, as the case may be, to a vehicle, machinery or equipment, used by the nominated undertaker for the purposes of or in connection with the exercise of the powers conferred by this Act with respect to works, and
 - (b) 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 of the Control of Pollution Act 1974.
- (3) This sub-paragraph applies if the nuisance—
- (a) is a consequence of—
 - (i) the construction, use or maintenance of the works authorised by this Act, or
 - (ii) the operation of Phase 2a of High Speed 2, and
 - (b) cannot reasonably be avoided.