SCHEDULES

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SCHEDULE 26   Section 31

NOISE

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Control of noise on construction sites

1   (1) In the Control of Pollution Act 1974, sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) each have effect, in relation to works carried out in exercise of the powers conferred by this Act, as if—

        (a) in subsection (7) (appeal against notice or against failure to give consent or the giving of qualified consent), for "a magistrates' court" there were substituted "the Secretary of State", and

        (b) after that subsection there were inserted—

           "(7A) If within seven days of the giving of notice of appeal under subsection (7) of this section the appellant and the local authority so agree, the appeal shall, instead of being determined by the Secretary of State, be referred to arbitration."

     (2) The Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly may, in relation to appeals which (by virtue of sub-paragraph (1)) are referred to arbitration under section 60(7A) or 61(7A) of the Control of Pollution Act 1974, by regulations make any such provision as may be made by regulations under section 70 of that Act in relation to appeals under Part 3 of that Act to the Secretary of State.

     (3) Regulations under sub-paragraph (2) must be made by statutory instrument; and a statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

Defences to proceedings relating to statutory nuisance

2   In proceedings for an offence under section 80(4) of the Environmental Protection Act 1990 (offence of contravening abatement notice) in respect of a statutory nuisance falling within section 79(1)(g) or (ga) of that Act where the offence consists in contravening requirements imposed by virtue of section 80(1)(a) or (b) of that Act, it is a defence to show that 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.

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.

4   Section 61(9) of the Control of Pollution Act 1974 (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) does not apply where the consent relates to the use of premises or, as the case may be, of a vehicle, machinery or equipment 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.