
STATUTORY INSTRUMENTS

2015 No. 1386

The Swansea Bay Tidal Generating Station Order 2015

PART 2

Principal powers

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁾ (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1) (d), (e), (fb), (g), (ga) or (h) of that Act, no order is to be made, and no fine is to be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and 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), of the Control of Pollution Act 1974⁽²⁾;
- (b) is a consequence of the construction or maintenance of the authorised development and cannot reasonably be avoided;
- (c) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and is attributable to the use of the authorised development in accordance with a noise monitoring scheme agreed with the relevant planning authority as described in Requirement 18 (monitoring of noise during construction); or
- (d) is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) 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 by the undertaker 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 Act which are not relevant to this Order.

⁽²⁾ 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 Act which are not relevant to this Order.