
STATUTORY INSTRUMENTS

2019 No. 1358

The Northampton Gateway Rail Freight Interchange Order 2019

PART 6

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

41.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisance) of the Environmental Protection Act 1990⁽¹⁾ in relation to a nuisance falling within paragraph (g) of section 79(1)⁽²⁾ (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order may be made, and no fine may be imposed, under section 82(2)⁽³⁾ of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker 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) of the Control of Pollution Act 1974⁽⁴⁾; 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 be reasonably avoided.

(2) Section 61(9)⁽⁵⁾ of the Control of Pollution Act 1974 does not apply where the consent relates to the use of the premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Commencement Information

II Art. 41 in force at 30.10.2019, see [art. 1](#)

(1) 1990 c. 43. There are amendments to this section which are not relevant to this Order.
(2) Section 79(1) was amended by sections 101 and 102 of the Clean Neighbourhood and Environment Act 2005 (c. 16). There are other amendments to that section which are not relevant to this Order.
(3) Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6(b) of Schedule 17 to the Environment Act 1995 (c. 25).
(4) 1974 c. 40. Section 61(2) was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55).
(5) Section 61(9) was amended by paragraph 15(1) and (3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43) and section 120 of, and Schedule 24 to, the Environment Act 1995 (c. 25).

Changes to legislation:

There are currently no known outstanding effects for the The Northampton Gateway Rail Freight Interchange Order 2019, Section 41.