
STATUTORY INSTRUMENTS

2022 No. 820

The Northumberland Line Order 2022

PART 5

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

29.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisance)(1) of the Environmental Protection Act 1990 in relation to a nuisance falling within section 79(1)(g) or 79(1)(ga) (statutory nuisances and inspections therefor)(2) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the Council or Network Rail for or in connection with the construction or maintenance of the development and that the nuisance is attributable to the carrying out of the development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites (3)), of the Control of Pollution Act 1974; or
- (b) that the nuisance is a consequence of the construction, operation or maintenance of the development and that it cannot reasonably be avoided.

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

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

- (a) is a consequence of the construction, operation or maintenance of the development; and
- (b) cannot reasonably be avoided.

(4) The provisions of this article do not affect the application to the development of section 122 (statutory authority as a defence to actions in nuisance, etc.)(5) of the Railways Act 1993 or any rule of common law having similar effect.

(1) 1990 c. 43.

(2) Section 79(1)(ga) was inserted by section 2(2)(b) of the Noise and Statutory Nuisance Act 1993 (c. 40).

(3) 1974 c. 40.

(4) Section 80(1) was amended by section 86 of the Clean Neighbourhoods and Environment Act 2005.

(5) 1993 c. 43.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
