
STATUTORY INSTRUMENTS

2024 No. 70

**The Drax Power Station Bioenergy with Carbon
Capture and Storage Extension Order 2024**

PART 7

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

36.—(1) Where proceedings are brought under section 82(1) (summary of proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990⁽¹⁾ in relation to a nuisance falling within section 79(1) (statutory nuisances and inspections therefore) of that Act no order is to be made, and no fine may be imposed, under section 82(2) 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, maintenance or decommissioning of the authorised development and that the nuisance is attributable to the construction or maintenance of the authorised 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), or section 65 (noise exceeding registered level) of the Control of Pollution Act 1974⁽²⁾; or
- (ii) is a consequence of the construction, maintenance or decommissioning of the authorised development and that it cannot be reasonably avoided; or
- (iii) is a consequence of the use of the authorised development and that it cannot be reasonably 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 and section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded) of that Act, do not apply where the consent relates to the use of premises by the undertaker for the purposes of, or in connection with the construction, maintenance or decommissioning of the authorised development.

(1) 1990 c. 43. Section 82 was amended by section 103 to the Clean Neighbourhoods and Environment Act 2005 (c. 16); Section 79 was amended by sections 101 and 102 of the same Act.

(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.