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STATUTORY INSTRUMENTS

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**2023 No. 110**

**The East Northamptonshire Resource  
Management Facility Order 2023**

**PART 4**

**MISCELLANEOUS AND GENERAL**

**Defence to proceedings in respect of statutory nuisance**

**17.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(1)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraphs (a), (c), (d), (e), (g) or (ga) of section 79(1) of that Act no order must 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 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) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(2)</sup>; 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—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with Requirement 5; or
  - (ii) is a consequence of the use of the authorised 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 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), must not apply where any 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.

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(1) 1990 c. 43, amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16). There are other amendments to the Environmental Protection Act 1990 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 Control of Pollution Act 1974 not relevant to this Order.

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**Status:** This is the original version (as it was originally made).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

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