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STATUTORY INSTRUMENTS

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**2024 No. 230**

The Medworth Energy from Waste Combined  
Heat and Power Facility Order 2024

PART 6

MISCELLANEOUS AND GENERAL

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

**40.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990<sup>(1)</sup> in relation to a nuisance falling within sub-paragraph (g) of section 79(1) (statutory nuisances and inspections therefor) 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 or maintenance or decommissioning 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 sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974<sup>(2)</sup>; or
  - (ii) is a consequence of the construction or maintenance or decommissioning 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 compliance with requirement 19 of Schedule 2 (requirements); or
  - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 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 or decommissioning of the authorised development.

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(1) 1990 c. 43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16); Section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.

(2) 1974 c. 40. Sections 61(9) was amended by paragraph 1 of Schedule 24 to the Environment Act 1995 and by section 162(1) and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 c. 25. There are other amendments to the 1974 Act which are not relevant to this Order.