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STATUTORY INSTRUMENTS

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**2022 No. 1248**

**The A417 Missing Link Development Consent Order 2022**

**PART 7**

**MISCELLANEOUS AND GENERAL**

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

**44.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990<sup>(1)</sup> in relation to a nuisance falling within paragraph (d), (fb), (g) or (ga) 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)<sup>(2)</sup> 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 sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974<sup>(3)</sup>; or
- (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (iii) 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 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 of the authorised development.

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(1) 1990 c. 43. There are amendments to this subsection which are not relevant to this Order.

(2) Section 82(2) was amended by section 51(1) and (2) of the Noise and Statutory Nuisance Act 1993 (c. 40). There are other amendments to this subsection which are not relevant to this Order.

(3) 1974 c. 40. Section 61 was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to section 61 which are not relevant to this Order.