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STATUTORY INSTRUMENTS

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**2015 No. 680**

**The Knottingley Power Plant Order 2015**

**PART 3**

**OPERATIONS**

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

**9.—(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 paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may 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) or 65 (noise exceeding registered level), 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

(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 a noise management scheme approved by the relevant planning authority under Requirement 23 (control of noise – operational phase); 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 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), 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. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995 (c.25). There are amendments to this Act which are not relevant to this Order.

(2) Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c.40) and paragraph 6 of Schedule 17 to the Environment Act 1995 (c.25).

(3) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15(4) of Schedule 15 to, the Environmental Protection Act 1990, c.43. There are other amendments to the 1974 Act which are 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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