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STATUTORY INSTRUMENTS

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**2017 No. 766**

**The Wrexham Gas Fired Generating Station Order 2017**

**PART 2**

**PRINCIPAL POWERS**

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

**8.—(1)** Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(1)</sup> (summary proceedings by persons aggrieved by statutory nuisances) 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 is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) 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>(2)</sup>;
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) 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), 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 or maintenance 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.

(2) 1974 c.40. Section 60 was amended by section 7(3)(a)(4)(g) of the Public Health (Control of Disease) Act 1984 (c.22) and section 112(1)(3) of the Electricity Act 1989 (c.29); Sections 61 and 65 were amended by section 133 and Schedule 7 to the Building Act 1984 (c.55), section 120 and Schedule 24 to the Environment Act 1995 (c.25) and section 162 and Schedule 15 to the Environmental Protection Act 1990 (c.43). There are other amendments not relevant to this Order.