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STATUTORY INSTRUMENTS

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**2021 No. 1414**

**The Norfolk Boreas Offshore Wind Farm Order 2021**

**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 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) 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 project and that the nuisance is attributable to the carrying out of the authorised project 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 of the authorised project 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 project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with requirement 27 (control of noise during operational phase and during maintenance); or
  - (ii) is a consequence of the use of the authorised project 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 purposes of or in connection with the construction or maintenance of the authorised project.

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(1) 1990 c. 43. Section 82 was amended by section 107 and paragraph 6 of Schedule 17 to the Environment Act 1995 c. 25, section 5 of the Noise and Statutory Nuisance Act 1993 c. 40, and section 103 of the Clean Neighbourhood and Environment Act 2005 c. 16 and section 79 was amended by sections 101 and 102 of the Clean Neighbourhoods and Environment Act 2005 c. 16, and by section 120 and paragraph 89 of Schedule 22 to the Environment Act 2005. There are other amendments which are not relevant to the Order.

(2) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 c. 43. There are other amendments to the 1974 Act which are not relevant to the Order.