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STATUTORY INSTRUMENTS

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**2021 No. 173**

**The Wheelabrator Kemsley K3 Generating Station Order 2021**

**PART 4**

**MISCELLANEOUS AND GENERAL**

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

**13.**—(1) Paragraph (2) applies where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(1) (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).

(2) No order may 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 is attributable to that construction or maintenance—
  - (i) in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974(2);
  - (ii) in accordance with a consent given under section 61 of that Act (prior consent for work on construction site); or
- (b) is a consequence of the construction, maintenance or operation of the authorised development and cannot reasonably be avoided.

(3) Section 61(9) (prior consent for work on construction site) 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 development.

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(1) 1990 c. 43.  
(2) 1974 c. 40.