
STATUTORY INSTRUMENTS

2022 No. 299

The Bridgwater Tidal Barrier Order 2022

PART 7

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

62.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁾ (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within section 79(1)(g) of that Act⁽²⁾ (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 the defendant shows—

- (a) that the nuisance relates to premises used by the Agency for the purposes of or in connection with the exercise of powers conferred by this Order with respect to the authorised works and that the nuisance is attributable to the carrying out of the authorised works which are being carried out in accordance with a notice served under section 60 of the Control of Pollution Act 1974⁽³⁾ (control of noise on construction sites), or a consent given under section 61 of that Act⁽⁴⁾ (prior consent for work on construction sites), or
- (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (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) does not apply where the consent relates to the use of premises by the Agency for the purposes of or in connection with the exercise of powers conferred by this Order with respect to works.

(1) 1990 c. 43. Section 82 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).

(2) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 5).

(3) 1974 c. 40.

(4) Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), and by Schedule 24 to the Environment Act 1995.