
STATUTORY INSTRUMENTS

2024 No. 436

The HyNet Carbon Dioxide Pipeline Order 2024

PART 2

Principal Powers

Defence to proceedings in respect of statutory nuisance

9.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraphs (g) (noise emitted from premises so as to be prejudicial to health or a nuisance) and (ga) (noise that is prejudicial to health or nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road;) of section 79(1) of that Act 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 site), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(1); or
- (b) 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 in accordance with the controls and measures relating to noise as described in the construction environment management plan approved under Schedule 2 (Requirements) or in accordance with the noise levels set out in an environmental permit relating to the operation of the development;
- (c) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (d) is a consequence of complying with a requirement of this Order and that it cannot reasonably be avoided; or
- (e) is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(2) For the purposes of paragraph (1) above, compliance with the controls and measures relating to noise described in the CEMP will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

(3) Where a relevant planning authority is acting in accordance with section 60(4) and section 61(4) of the Control of Pollution Act 1974 in relation to the construction of the authorised development then the local authority must also have regard to the controls and measures relating to noise referred to in the CEMP approved under Schedule 2 (Requirements).

(1) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 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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(4) 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 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.

(5) In this article “premises” has the same meaning as in section 79 of the Environmental Protection Act 1990(2).