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STATUTORY INSTRUMENTS

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**2022 No. 911**

**The A47 North Tuddenham to Easton  
Development Consent Order 2022**

**PART 7**

**MISCELLANEOUS AND GENERAL**

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

**43.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990<sup>(1)</sup> in relation to a nuisance falling within paragraphs (d), (fb), (g) or (ga) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2)<sup>(2)</sup> 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 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), of the Control of Pollution Act 1974; or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9)<sup>(3)</sup> (prior consent for work on construction sites) 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.

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**Commencement Information**

**II** Art. 43 in force at 2.9.2022, see [art. 1](#)

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(1) [1990 c. 43](#). There is an amendment to section 82(1) which is not relevant to this Order.  
(2) Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act [1993 \(c. 40\)](#). There is another amendment to this subsection which is not relevant to this Order.  
(3) [1974 c. 40](#). Section 61(9) was amended by section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act [1990 \(c. 43\)](#). There are further amendments to section 61 which are not relevant to this Order.

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**Changes to legislation:** There are currently no known outstanding effects for the The A47 North Tuddenham to Easton Development Consent Order 2022, Section 43. (See end of Document for details)

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There are currently no known outstanding effects for the The A47 North Tuddenham to Easton Development Consent Order 2022, Section 43.