

Status: Point in time view as at 11/02/2021.

Changes to legislation: *There are currently no known outstanding effects for the High Speed Rail (West Midlands - Crewe) Act 2021, Cross Heading: Defences to proceedings relating to statutory nuisance. (See end of Document for details)*

SCHEDULES

SCHEDULE 26

NOISE

Defences to proceedings relating to statutory nuisance

- 2 In proceedings for an offence under section 80(4) of the Environmental Protection Act 1990 (offence of contravening abatement notice) in respect of a statutory nuisance falling within section 79(1)(g) or (ga) of that Act where the offence consists in contravening requirements imposed by virtue of section 80(1)(a) or (b) of that Act, it is a defence to show that the nuisance—
- (a) is a consequence of—
 - (i) the construction, use or maintenance of the works authorised by this Act, or
 - (ii) the operation of Phase 2a of High Speed 2, and
 - (b) cannot reasonably be avoided.
- 3 (1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by person aggrieved by statutory nuisance) in relation to—
- (a) a statutory nuisance falling within section 79(1)(g) of that Act (noise emitted from premises), or
 - (b) a statutory nuisance falling within section 79(1)(ga) of that Act (noise emitted by vehicle, machinery or equipment in a street),
- no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that sub-paragraph (2) or (3) applies.
- (2) This sub-paragraph applies if the nuisance—
- (a) relates to premises or, as the case may be, to a vehicle, machinery or equipment, used by the nominated undertaker for the purposes of or in connection with the exercise of the powers conferred by this Act with respect to works, and
 - (b) is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 of the Control of Pollution Act 1974.
- (3) This sub-paragraph applies if the nuisance—
- (a) is a consequence of—
 - (i) the construction, use or maintenance of the works authorised by this Act, or
 - (ii) the operation of Phase 2a of High Speed 2, and
 - (b) cannot reasonably be avoided.
- 4 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

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to proceedings under section 82 of the Environmental Protection Act 1990) does not apply where the consent relates to the use of premises or, as the case may be, of a vehicle, machinery or equipment by the nominated undertaker for the purposes of or in connection with the exercise of the powers conferred by this Act with respect to works.

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