
STATUTORY INSTRUMENTS

2022 No. 1067

**The Network Rail (Huddersfield to Westtown
(Dewsbury) Improvements) Order 2022**

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

41.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990⁽¹⁾ in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61(3) (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) (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 Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) 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)(4) of that Act where the offence consists in contravening requirements imposed by virtue of section 80(1)(a) or (b)(5) of that Act, it is a defence to show that the nuisance—

- (a) is a consequence of the construction, operation or maintenance of the works authorised by this Order; and
- (b) cannot reasonably be avoided.

(1) 1990 c. 43. Paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25).

(2) Section 51(1) and (2) of the Noise and Statutory Nuisance Act 1993 (c. 40). There are other amendments to this subsection which are not relevant to this Order.

(3) 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), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

(4) Section 79(1)(ga) was inserted by subsection 2(2)(b) of the Noise and Statutory Nuisance Act 1993.

(5) Section 80(1) was amended by section 86 of the Clean Neighbourhoods and Environment Act 2005.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(4) The provisions of this article do not affect the application to the authorised works of section 122 (statutory authority as a defence to actions in nuisance, etc.) of the Railways Act 1993⁽⁶⁾ or any rule of common law having similar effect.

⁽⁶⁾ 1993 c. 43.