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STATUTORY INSTRUMENTS

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**2024 No. 393**

The National Grid (Yorkshire Green Energy  
Enablement Project) Development Consent Order 2024

PART 6

MISCELLANEOUS AND GENERAL

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

**43.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990<sup>(1)</sup> 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 a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order must be made, and no fine may be imposed, under section 82(2) (summary proceedings by persons aggrieved by statutory nuisances) 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<sup>(2)</sup>; or
  - (ii) 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 the controls and measures relating to noise as described in the code of construction practice or the construction management plans or in accordance with the noise levels set out in an environmental permit relating to the construction, maintenance or operation of the authorised development; or
  - (iii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
  - (iv) is a consequence of complying with a requirement of this Order and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) 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 which is being used in accordance with the

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<sup>(1)</sup> 1990 c. 43. There are amendments to this sub-section which are not relevant to this Order.

<sup>(2)</sup> 1974 c. 40. Section 61 was amended by section 162(1) of, and paragraph 15(3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to section 61 but none are relevant to this Order.

noise and vibration management plan prepared under requirement 5 of Schedule 3 (requirements) to this Order; or

(ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) For the purposes of paragraph (1) above, compliance with the controls and measures relating to noise described in the code of construction practice and the noise and vibration management plan 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) (control of noise on construction sites) and section 61(4) (prior consent for work on construction sites) 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 code of construction practice and the construction management plans.

(4) Section 61(9) (prior consent for work on construction sites) 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.