
WELSH STATUTORY INSTRUMENTS

2021 No. 1478

The Morlais Demonstration Zone Order 2021

PART 4

Miscellaneous and General

Defence to proceedings in respect of statutory nuisance

38.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁾ (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1) (d), (e), (fb), (g), (ga) or (h) of that Act⁽²⁾, no order is to be made, and no fine is to 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 maintenance of the authorised works and is attributable to the carrying out of the authorised works in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61⁽³⁾ (prior consent for work on construction site), of the Control of Pollution Act 1974⁽⁴⁾;
- (b) is a consequence of the construction, maintenance or decommissioning of the authorised works and cannot reasonably be avoided;
- (c) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised works and is attributable to the use of the authorised works in accordance with a noise monitoring scheme agreed with the planning authority pursuant to a condition of the deemed planning permission; or
- (d) is a consequence of the use of the authorised works and cannot reasonably be avoided.

(2) 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 to proceedings under section 82 of the Environmental Protection Act 1990) 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 works.

(1) 1990 c. 43. Section 82 was amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c. 40), paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25), section 103(1), (4) and (5) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and S.I. 2015/664.

(2) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 8).

(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 (c. 25) and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

(4) 1974 c. 40.