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HEALTH AND SAFETY COMMISSION

Implementation of the Physical Agents (Noise) Directive

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Cleared by Sandra Caldwell on 17 February 2003

Issue

1. This paper asks the Commission to agree the proposals for implementing the Physical Agents (Noise) Directive.

Timing

2. Routine

Recommendation

3. That the Commission agrees the proposals below and the timetable at Annex B.

Background

4. The background to the Directive was given in papers HSC/01/44, MISC/01/18, MISC/01/30, MISC/02/09 and MISC/02/36.

5. The Physical Agents (Noise) Directive was adopted by the European Parliament on 5 December 2002 and by the Council of Ministers on 9 December. It came into force when it was published in the Official Journal of the European Communities on 15 February 2003. It must be transposed into UK legislation by 15 February 2006. A copy of the published text is at Annex A. The new regulations will replace the existing Noise at Work Regulations 1989.

Argument

6. The Government's policy for the transposition of EC measures into UK law is:

- transposing so as to achieve the objectives of the EC measure;
- transposing on time;
- implementing the Government's policy goals, including that of minimising burdens on business

- inviting Ministers to articulate clear policy goals for the transposition;
- options for transposition to be described to Ministers with an assessment of the risks to the achievement of the objectives, including legal risks.

7. Annex B sets out the background to the Directive and the timetable and main stages for the introduction of Regulations. UK Regulations must implement the Directive fully. We see no reason either to over- or underimplement the Directive, avoiding both “gold plating” and any risk of infraction proceedings. Wherever possible, we will use concepts already in existence in the Noise at Work Regulations 1989, with which employers are already familiar. The options available for transposition are therefore limited. Those we have been able to identify are summarised at Annex C and will be put to the Minister and consultees for comment. The options will also be put to the Ministerial Panel on Regulatory Accountability, chaired by Lord MacDonald, which has shown great interest in the Physical Agents Directives (vibration as well as noise).

ACoP or guidance?

8. It is proposed that the Regulations should be accompanied by guidance rather than an Approved Code of Practice (ACoP) because there is no single method of compliance that is in all cases better than any other.

Evaluation

9. Current practice is to evaluate Regulations two years after they come into force, but this practice might need to be reviewed in light of the pressure on resources. An evaluation plan will be developed in consultation with the Economic Advisers Unit. We will seek to use existing data as a baseline if possible.

Consultation

10. A wide range of sectors use noisy processes including construction, engineering, aircraft and vehicle manufacture and repair, and music and entertainment. Although employers already have to comply with the Noise at Work Regulations 1989, the new regulations will mean a lowering of the noise levels at which they have to take action. Early informal consultation meetings (with interested parties in HSE, other Government Departments, industry, trade unions and professional and academic bodies) suggest that the greatest challenges are likely to be faced by the MoD and the music and entertainment sector. MoD will have recourse to an exemption under the Framework Directive, though we are considering other legal options. In recognition of the unique challenges in the music and entertainment sector, the Directive incorporates a two-year transitional period during which practical guidance must be produced. Further informal meetings with individual organisations will continue to be offered and arranged as necessary. The guidance for the music and entertainment sector will be progressed in consultation with stakeholders and interested members of the Broadcasting and Entertainment Joint Advisory Committee. The informal consultations are expected to feed into the formal Commission Consultative exercise planned for 2004.

Presentation

11. There have been some concerns about the Directive expressed by the entertainment industry, led by the pubs sector, but also involving orchestral musicians. This has sparked some debate which has been reflected in the media. Criticism has been

directed towards Europe rather than the UK Government, and has been in the main allayed by the introduction of the two-year transitional period for the music and entertainment sectors. However, decisions have to be made as to the scope of the “music and entertainment” sector, which may well spark new contentions within some parts of the sector.

Costs and Benefits

12. A Regulatory Impact Assessment based on the final text is attached at Annex D. You will note that overall costs and benefits are broadly equivalent. The RIA will be revised as necessary to reflect options discussed in the Consultation Document.

Financial/Resource Implications for HSE

13. The resources required for the preparation of regulations, guidance, consultative document and all associated work will be found from within planned staffing.

Environmental Implications

14. None

Other Implications

15. The proposed Noise Regulations will apply across Britain, including Scotland and Wales. We are keeping the devolved administrations of Scotland and Wales informed of the proposed regulations. The Regulations will apply to a wide range of industry including Local Authorities and small businesses. We are liaising with representative bodies to keep them informed.

Action

16. To agree the plan for implementation of the Directive.

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