

## **Annex C to HSC/03/18**

### **Options available for transposition of the Physical Agents (Noise) Directive**

#### **Background**

1. Member States are required to implement Directives fully. However, there are some parts of the Directive where Member States have choices about how they implement the Directive, or where the Directive is written in such a way as to leave some matters open to interpretation. This Annex sets out the issues where we believe there are different options for the transposition of the Directive. We intend to seek views on the options during the public consultation exercise. At present, we do not consider that we risk attracting infraction proceedings in relation to any of these issues.

#### **Issue 1: Use of the weekly noise exposure level to assess workers' noise exposure (Article 3.3)**

2. Member States may, for the purposes of applying the exposure action and limit values (EAVs and ELVs respectively), use the weekly noise exposure level instead of the daily noise exposure level, 'in duly justified circumstances, for activities where daily noise exposure varied markedly from one working day to the next', on condition that the weekly noise exposure does not exceed the ELV and measures are taken to reduce risks to a minimum.

3. One option is for employers to be required to apply to HSE for permission to use weekly averaging, and meet certain criteria by demonstrating that their employees' exposure levels do vary markedly over the week. This would be a cumbersome and resource-intensive exercise.

4. Weekly averaging would entail substantially more monitoring and record-keeping than would daily averaging, so it is unlikely that an employer would wish to use weekly averaging unless they had good reason to. We consider that it would be appropriate for the Regulations to allow employers to choose to use weekly averaging (in consultation with employees) when exposure is varied.

#### **Issue 2: Calculating the weekly average (Article 2)**

5. The Directive definition of weekly averaging is based on international standard ISO 1999, and is calculated from the logarithmic average of the daily noise exposure for a nominal week of five eight-hour working days. In theory, noise exposure over any number of working days can be normalised to five and presented as a "weekly average". So the question arises as to over what period weekly averaging should be permitted. In some sectors (eg construction, engineering) a seven-day working week is the norm. We believe that averaging over up to a maximum of 7 days is in keeping with the spirit of

the Directive whilst accommodating some sectors for whom this is the more typical working pattern.

### **Issue 3: Setting the point at which an employer must do a noise exposure assessment or measurement (Article 4.1)**

6. Assessment of whether there is a possible risk from noise should be done as a matter of course under the Management of Health and Safety at Work Regulations 1999. However, the Directive says that 'the employer shall assess, and, if necessary, measure the levels of noise to which workers are exposed', in other words there is a requirement to quantify exposure (and hence risk). Measurement of actual noise exposure would require a trained person with suitable measuring equipment, who would make recommendations about noise control.

7. The Directive does not set out explicitly when it is necessary for measurement to be done. Since employers are required to take specific actions at the EAVs and keep exposure below the ELVs it might seem that accurate quantification of exposure (ie measurement) is necessary at the lower EAVs (though it would be open to employers to assume that the EAVs or the ELVs were exceeded and take action without doing detailed measurement).

8. However, we are developing some simple "rules of thumb" which will give a broad indication of whether exposure is likely to be around the EAVs. We propose to recommend that applying these rules of thumb, and relying on information on noise emissions from machined manufacturers, might be an adequate assessment where exposures are likely to be at the lower EAVs, but at the upper EAVs the assessment should be informed by measurements. The risk of hearing loss is relatively low around the lower EAVs, but considerably higher above the upper EAVs and the ELVs. This is very much in line with guidance on the current Noise Regulations, where we expect measurements to be made at the first action value (equal in the new Regulations to the upper EAVs) but not below. This will ensure that the added costs of assessment at the new lower EAVs will be minimised.

### **Issue 4: What 'competent services' should be required to carry out the noise exposure assessment measurement? (Article 4.4)**

9. The Directive says that the assessment and measurement should be planned and carried out by competent services at suitable intervals. In the majority of cases, it should be possible for employers themselves to undertake the risk assessments based on guidance from HSE. However, some complex assessments and particularly measurement of noise exposure and technical advice on control strategies will require a competent external consultant. In some situations, employers could arrange for an employee to be trained to do the work and buy or hire measuring equipment if this was necessary. We believe that HSE should provide guidance:

- which will assist employers to make a competent assessment of noise exposure and identify when they will need to engage expert assistance;
- on how to make suitable arrangements for an employee to receive training on noise exposure measurement and risk management programmes;
- on the level of qualification, competence and service employers should expect from consultants.

**Issue 5: What should be the criteria for when exposure reassessments are carried out? (Article 4.7)**

10. The Directive requires that the risk assessment, which may include an assessment of noise exposure, should be updated when circumstances change. We will provide more detailed guidance on factors that could trigger the need for a reassessment of noise exposure. This should help avoid unnecessarily frequent reassessments while ensuring that new risks are not overlooked.

**Issue 6: When should health surveillance be required? (Article 10)**

11. The Directive requires:
- appropriate health surveillance where the risk assessment indicates a risk to health;
  - that workers exposed above the upper EAVs shall have the right to have their hearing checked by a doctor or by another suitably qualified person under the responsibility of a doctor;
  - preventive audiometric testing to be made available for workers whose exposure exceeds the lower EAV, where the assessment indicates a risk to health.

12. The risk of noise induced hearing loss below the upper EAVs is comparatively low, and, given that any changes in hearing will be small, the likelihood of health surveillance detecting them is reduced. We believe that health surveillance is not generally appropriate for workers exposed below the upper EAVs (except where the risk assessment has identified particularly vulnerable workers).

13. We will therefore recommend that health surveillance (audiometry) should be provided for workers regularly exposed above the upper EAVs. Many employers already do this. We believe this approach takes into account all the Directive's health surveillance provisions and will identify cases of hearing loss without burdening employers unduly.

**Issue 7: What should health surveillance for hearing involve? (Article 10)**

14. The Directive suggests hierarchical differences between health surveillance, hearing checks and audiometric testing, with the implication that a "hearing check" conducted by a doctor is more rigorous than "audiometric

testing". This may be the case in other Member States given different health systems and infrastructures, but it does not reflect the situation in the UK. HSE is of the view that audiometry is the most appropriate test to use.

#### **Issue 8: What role should doctors have in health surveillance for hearing?**

15. The Directive stipulates that a worker has the right to hearing checks at the upper EAVs "by a doctor or by another suitably qualified person under the responsibility of a doctor, in accordance with national law and/or practice". Again, the wording has been influenced by different practices and systems amongst Member States and is arguably not appropriate for the UK. We believe that most initial health surveillance need not involve doctors and nurses, but could be carried out and interpreted by someone trained to recognised standards set by the British Society of Audiology. This person may or may not be under the supervision of a doctor. There would appear to be no reason for workers to seek medical intervention if the employer already provided health surveillance at the upper EAVs. If workers do, they can be referred to their GP, as is the case under the identical requirement in the 1986 Directive.

#### **Issue 9: How should we implement the Directive in the 'music and entertainment' sectors? (Articles 14 and 17)**

16. The Directive allows a transitional period of up to two years for those in the music and entertainment sectors. Those covered by the transitional period would have a two-year reprieve from complying with the requirements of the Directive, but would have to continue to comply with the Noise at Work Regulations (1989) in the interim. Meanwhile, Member States in association with social partners are required to use the transitional period to draft and publish a "code of conduct" with practical guidelines for workers and employers in the music and entertainment sectors. The first question which arises is how is this transitional period to be administered – a "blanket" transitional period for all employers in these sectors or on a case-by-case basis? HSE is not resourced to set up an administrative system to grant transitional periods on a selective basis, nor is it clear what criteria might be used. A bureaucratic permissioning system would impose costs on employers in terms of time taken to apply and comply with requirements, particularly in the case of individual applications. We therefore propose to allow broad-brush transitional periods in the Regulations.

#### **Issue 10: How should we define 'music and entertainment'? (Articles 14 and 17)**

17. Music and entertainment has a wide application. It could cover orchestras, concert halls and theatres, pubs, nightclubs, discos, cinemas, restaurants, leisure centres/activities, sporting events, fairgrounds, theme parks etc. It is important that clear boundaries are applied with regard to the application of the transitional period. We recognise that musicians may have particular problems in complying with the Directive without compromising

performance and artistic integrity, but we are not convinced that other areas of the entertainment sector should have difficulties different from those of other industries. The original proposal for a transitional period was limited to the music industry and we are of the view that applying the transitional period to venues where live music is played is most in keeping with the intentions of the European Commission, Parliament and other Member States, as well as the UK negotiating strategy. We will, however, call in the consultative document for submissions on whether the definition of “entertainment” should be expanded.