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HEALTH AND SAFETY COMMISSION

Proposed Control of Noise at Work Regulations: results of the public consultation and recommendations

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Issue

1. Approval of the proposed Control of Noise at Work Regulations following public consultation. The new regulations implement an EU Directive. They will tighten up existing duties on employers and will contribute to our ill-health targets in the longer term. Implementation is on schedule and responses to the public consultation were largely supportive of our proposals.

Timing

2. We have until 15 February 2006 to introduce the regulations, but if we are to issue all our revised guidance before the regulations come into force, the regulations will need to be made and laid before the summer recess, general election notwithstanding.

Recommendation

3. That the Commission:
- note the results of the public consultation at Annex A and approve the associated recommendations;
 - approve the draft regulations at Annex B for submission to the Minister;
 - note the final Regulatory Impact Assessment at Annex C.

Background

4. The draft regulations implement the EU Physical Agents (Noise) Directive which we are bound to transpose and which aims to protect workers from risks to their health arising from exposure to noise. The Directive replaces a 1986 Directive on this subject that was implemented in the UK by the Noise at Work Regulations 1989. The new regulations will replace the 1989 regulations. The new Directive and draft implementing regulations introduce stricter exposure action values and a new exposure limit value, based on

evidence on the risks of noise exposure collected since the 1980s. It is estimated that around three-quarters of a million workers in the UK are still exposed above the new Exposure Limit Value.

5. We expect many sectors to be affected by the regulations: agriculture, construction, quarrying, mining, transport, forestry, drinks and packaging, textiles, potteries, glass, rubber, printing, metalworking, woodworking, steel entertainment, and the armed forces. There may be an effect on other non-industrial sectors such as education (teachers) and services (eg call centres). The Directive and draft regulations allow for a transitional period of two years for the music and entertainment sector, where noise is not an unwanted by-product and the use of hearing protection could influence artistic integrity.

6. The risks from noise exposure are well known. In 1972, the Factory Inspectorate published a Code of Practice. Noise was also included in the national campaign "Good Health is Good Business". Industry can reasonably be said to be aware of the hazard and the need to control it. We believe the new regulations will encourage employers to improve the control of this widespread hazard, and equipment suppliers to develop less noisy equipment. This will reinforce activities under the Noise and Hand-Arm Vibration Programme (Annex D).

7. Throughout negotiation and implementation of the Directive, we have worked hard to minimise burdens on business whilst ensuring benefits to employees. We believe the draft regulations and guidance provide a balanced approach to implementation of the Directive. Paper HSC/04/02 covered the draft consultative documents, and earlier papers HSC/03/18, HSC/01/44 and MISC/02/36 gave more background to the regulations.

Argument

Issues arising from the consultation

8. 1163 paper copies of the Consultative Document (CD) were issued and there were 7297 "hits" on the internet version of the CD during the consultation period. 123 responses to the CD were received from a wide range of key stakeholder bodies and individuals. The respondents are listed in Annex A.

9. We have already tackled some of these concerns by amending the draft regulations as described in paragraph 12. The guidance is currently being amended to take account of relevant and appropriate comments, and a weekly exposure calculator is being developed which we will put on the HSE website alongside the daily exposure calculator that is already available.

10. Concerns relating to the music and entertainment sector were mainly about the practicalities of being able to comply with the new values. These issues are recognised by the working group which is currently drafting practical guidance for this sector. The working group is comprised of external stakeholders and facilitated by HSE.

11. The Ministry of Defence have informed us that they are unlikely to be able to meet the new noise limits in all cases. For example, their research suggests that even with the use of hearing protection they cannot reduce peak noise exposure from some ordnance to meet the new limits. They will therefore need to seek exemption(s) from the Secretary of State for Defence under regulation 13 where they are unable to comply with the new regulations. This is not the MoD's preferred course of action. They will continue to seek

control measures and to review their procurement strategy wherever possible, but they have asked that this be drawn to your attention.

The draft Regulations

12. The draft regulations are at Annex B. Revised text is underlined. In some cases, this is only a matter of reordering to promote clarity. There are four significant changes:

- **Regulations 6(1), 6(2), 7(3)(c), 11(2)(c).** The Directive term “reduced to a minimum” in relation to reducing exposure or risk, has been transposed by “as low as reasonably practicable” (ALARP). This has been done on the basis that it has a clearer meaning, is terminology that has been used in other sets of regulations and is well understood by dutyholders and enforcing authorities. The term “to a minimum” necessarily implies that there is a minimum level that is to be defined in practical terms. It is appropriate that this minimum level should be consistent with the general duty imposed on employers by the Health and Safety at Work etc. Act 1974. The ALARP test, just as the SFAIRP standard in HSWA, sets this level in a manner which indicates an achievable standard of risk management to dutyholders and offers workers protection to a standard which we consider to be consistent with the requirements of European and United Kingdom law. Note that this formulation was used in the Vibration Regulations.
- **Regulation 5(2).** This has been revised so as not to require measurement at the Upper Exposure Action Values. The Directive requires measurement “if necessary”, not at a given exposure. The current wording is considered to reflect the Directive more accurately and addresses allegations of over-implementation by employer organisations such as the Institution of Civil Engineers. It is also in line with the requirements of the existing Noise at Work Regulations 1989 and our intentions to encourage employers to move on from assessment to action to control risk.
- **Regulations 5(5), 6(7), 7(3)(c).** Concern was expressed by the TUC in the consultation that we had underimplemented the Directive in not allowing specific provision for the consultation and involvement of employees and safety representatives in the draft regulations. Thus we have added specific provision for consultation on risk assessment, actions to reduce risk and choice of hearing protection.
- **Regulation 9(3)(c).** Deletion of the requirement, where an employer ceases to trade, to pass health records to HSE. This is an HSE policy decision which will apply to all regulations but which was made after the CD was published.

13. It is proposed that the draft regulations would come into force on 15 February 2006, as required by the European Directive. It is not possible to align the coming into force of these regulations with the Common Commencement Dates (CCDs) that have recently been agreed for domestic legislation – October 2005 would be too early and we cannot delay until April 2006. The draft guidance from the DTI’s Small Business Service on CCDs states clearly that:

- it would be inappropriate to bring forward the coming into effect of regulations to align with the CCDs, though in some instances it may be possible to bring forward the transposition dates of directives (clearly not an option in this case)

- it would be unlawful to delay implementation of our European obligations in order to line up with a CCD.

Guidance

14. After consultation with HSE's Communications Directorate, agreement has been reached to update and reissue the existing priced guidance (L108), free leaflet and employee pocket card. The revised publications will follow a similar format to the existing ones since they have proved popular - L108 has sold 17,978 copies (since 1998) and 133,970 free leaflets and 298,079 pocket cards have been distributed (since 2002). However the opportunity will be taken to simplify them wherever possible. The free leaflet and employee pocket card will be available on the website when they are printed. We plan to launch these during the European Week for Safety and Health in October 2005, ahead of the regulations coming into force in February 2006. Assuming the regulations are made and laid before the summer recess, we will also be able to launch the revised priced guidance at the same time. Because this guidance cites the regulations, it is necessary for the regulations to have been made before it is published.

Consultation

15. A wide range of industry, trade union and government organisations were consulted on the proposals. Field Operations Directorate, Policy Group, Solicitors' Office, Communications Directorate and the Financial Policy Unit have been consulted on this paper.

Presentation

16. There was a risk of negative press coverage on the consultative document. However, the work to reduce risk of this was successful and there were no adverse stories during consultation. We believe that industry concern has been mitigated because:

- we were able to negotiate successfully for more practicable provisions than originally proposed for the Directive (eg with regard to taking account of hearing protection attenuation for the exposure limit value)
- we are in discussion with sectors, such as music and entertainment, who have particular concerns
- there is broad recognition across industry that the new regulations could help to reduce noise-induced hearing loss further
- there is recognition that, in many sectors, the extent of additional effort and costs will depend on how risks are currently managed and how effective employers are in meeting their duties under the existing Noise at Work Regulations 1989.

17. These factors, coupled with the broad agreement to our proposals indicated by the consultation exercise, suggest that there is low risk of public criticism of the regulations on their introduction in 2006. However, work to ensure this will continue through sustained consultation with key stakeholders.

18. Awareness of the new regulations and guidance will be promoted during the European Week on Safety and Health in October 2005, which will be dedicated to noise at work. We are working with IOSH and other stakeholders such as the RNID to organise a

two-day conference at which we plan to launch the revised guidance on the new regulations. The RNID is taking an active part in this as part of their joint campaign with the TUC on worker exposure to noise in pubs and clubs. Other aspects of taking forward and building on the impetus provided by the regulations will be managed under the Noise and Hand-Arm Vibration programme as summarised in Annex D.

Costs and Benefits

19. The Regulatory Impact Assessment at Annex C has been cleared by the Ministerial Panel for Regulatory Accountability. Since being published in the Consultative Document, it has been revised to take account of ISO hearing loss data which give lower hearing losses at low exposure than previous data. The effect has been a six-fold reduction in benefits over 10 years, although the 40-year benefits remain the same. The latest version of the RIA also takes account of comments from the Cabinet Office's Regulatory Impact Unit. A few general concerns were raised during the public consultation about underestimation of costs to industry, but these were not supported by any data which could be used to revise estimates.

Financial/Resource Implications for HSE

20. Estimated costs to HSE - which will be accommodated within agreed budgets as part of the Noise and Hand-Arm Vibration Programme - are as follows:

- £96,000 for staff resources
- £15,000 for revising and administering the existing training for HSE inspectors
- £45,000 for revising the existing priced guidance and free leaflet
- £100,000 for research to evaluate the effectiveness of the Regulations.

21. Financing of the European Week event (paragraph 18) are being managed for IOSH by independent conference organisers, who are also bearing any financial risks. HSE will only incur costs for staff time, which are included in the overall staff resource above.

Environmental Implications

22. Reduction of work-related noise at source may have some knock-on effects on reduction of environmental noise, but these are likely to be minimal.

Other Implications

23. European Directives. The regulations will implement European Directive 2003/10/EC, which must be transposed into domestic legislation by 15 February 2006. The Directive will be transposed separately for sea transport (by the Maritime and Coastguard Agency), for Northern Ireland and for Gibraltar, based on the British Regulations.

24. Local Authority enforced premises will be covered by the regulations. Local Authority Environmental Health Officers will need to be trained on them. The Local Government Association, the Chartered Institute of Environmental Health and 29 Local Authorities around the UK were consulted on the proposals, although few of these responded.

25. Devolution. The regulations' powers are not devolved but the Scottish and Welsh devolved administrations have been consulted and will be kept informed of progress.

26. Small and medium sized enterprises. HSE's guidance will aim to provide information which will help SMEs to comply with minimal cost in simple and practical ways.

Action

27. The draft regulations at Annex B will be sent to the Minister under cover of a letter from Bill Callaghan together with a submission from HSE, a synopsis of the regulations, the Regulatory Impact Assessment and an Explanatory Memorandum to Parliament. Submissions will also be made to the Parliamentary Committees on Statutory Instruments (the Joint Committee on Statutory Instruments and the Merits Committee). The HSE Solicitor and the Parliamentary Relations Unit of DWP will also be instructed to proceed with their work on making and laying the regulations.