

Results of consultation on implementation of the Physical Agents (Noise) Directive (Consultative Document 196)

Section 1: Respondents to Consultation Exercise

A J Wheel
Advanced Noise Solutions Ltd
Agricultural Engineers Association
Albacare
Allen & Overy
Alvin Wooley
Amicus
Angel Trains Ltd
Ansell, Catherine Bridget
Association of Personal Injury Lawyers (APIL)
Association of Police Health and Safety Advisors (Region 9)
Association of Police Health and Safety Advisors
Association of Train Operating Companies Ltd (ATOC)
BAE Systems (Allan Brown)
Banfield, Steve
Brian Milligan Associates
Bristol City Council and Avon H&S liaison group
British Airways Health Services, Waterside (HMAG)
British Beer Pub Association
British Nuclear Fuels plc
British Occupational Hygiene Society
Brueck, Elizabeth (HSL)
Bureau Veritas Acoustic Technology
Castle Group Ltd
CBI
Charlesworth, Dr Peter
Cheshire Fire Authority
Cheverst, Abigail
Ciba Speciality Chemicals PLC (UK sites)
Cinema Exhibitors' Association
Civil Aviation Authority
Collman, Richard A
Confederation of Wool Textiles Ltd
Construction Health and Safety Group
Defence Logistics Organisation
Disability Rights Commission
Dove, Alan
East of England Regional H&S Advisers' Forum
Engineering Employers' Federation (EEF)
Faculty and Society of Occupational Physicians
Fire Brigade's Union
First Group plc
Forestry Commission
Fowler, William
Fulcrum Group of Companies
Gower, Nigel
Harlow Occupational Health Service
Hartley, Stephen
Head, David
Hearing and Healthcare Ltd
Holliday, Steve
Home Office

Howie, Robin
HSBC Rail (UK) Ltd
Institute of Acoustics (IOA)
Institute of Acoustics (member 1)
Institute of Acoustics (member 2)
Institute of Acoustics (member 3)
Institution of Civil Engineers (ICE)
Jaguar Cars, Land Rover & Aston Martin Lagonda
James, Keith
Kell, Dr Robert
Kent County Council
Kilpatrick, David
Lambert, David
London City Airport
London Fire & Emergency Planning Authority
London Underground Ltd
Londonlines
Louis Backwell
Lutman, Mark
Maltby, Dr Maryanne
Melinek, S J
Merseyrail
Ministry of Defence (MOD)
Mitchells and Butlers plc
National Association of Master Bakers
National Probation Directorate
Newcastle Occupational Health
Noise Technology Co
Novartis Pharmaceuticals UK Ltd
Office of the Deputy Prime Minister

Plantronics
Plymouth Hospitals NHS Trust
Police Federation of England and Wales
Porterbrook
Quin, Graham
Rail Safety and Standards Board
Read, Darren
Rizos, Claire
Royal Mail Group
Royal National Institute for Deaf People (RNID)
Saunders, Gill
Sewell, Craig
Silvester, Cllr Andrew
Smith, Wayne
SNV Consultants
Society of London Theatre & Theatrical Management
Association
Somerset Council
South, Tim
South West Trains
Southern Trains
Southwell, Natacha
Stirton, William
Strategic Rail Authority
Thameslink
The Association of British Theatre Technicians
The Association of Noise Consultants
The British Chemical Distributors and Trade Association
(BCDTA)
The Federation of Master Builders (FMB)

The Marine Painting Forum
Transport & General Workers Union
TUC
UNISON
University of Sheffield: School of Nursing and Midwifery
(Student 1)
University of Sheffield: School of Nursing and Midwifery
(Student 2)

University of Sheffield: School of Nursing and Midwifery
(Student 3)
Virgin Trains
Watson, David
Westmoreland, John
Weston, Rodney
Williams, Dr Robert Clive
Wyatt, David

NB: Where respondents have not specifically stated that they are responding on behalf of an organisation, even if they are affiliated to a company, they are listed as individuals.

Section 2: Main issues emerging from consultation

The responses are mainly supportive of the proposed regulations and guidance. A small minority of respondents (eg the Federation of Master Builders, the Institute of Civil Engineers) felt that the proposals went too far in some respects, a similar number (eg TUC, Amicus, independent consultants) felt that they did not go far enough. Comments relating to the length and complexity of the regulations and guidance were counterbalanced by others which were positive about the HSE approach and the clarity of the documents. Many of the comments which required action were suggestions as to how the regulations and guidance could be clarified. Most of these can be addressed with fairly minor amendments to the guidance, although a minority prompted amendments to the regulations. Editorial amendments to the guidance are currently being reviewed individually and taken on board where appropriate. Briefly, notable concerns were in the following areas:

- **Consultation:** The TUC felt that consultation and involvement of employees and safety representatives was given insufficient attention in the draft regulations and guidance.
- **Guidance:** More guidance was requested by a variety of respondents (eg Forestry Commission, Association of Personal Injury Lawyers, a Local Authority representative) on specific aspects of assessment and measurement, and on when health surveillance is required, as well as simple tools for calculating weekly exposure.
- **Familiarity:** It was suggested (eg by the Institution of Civil Engineers, Home Office and occupational health professionals) that we should adhere to terms, particularly in the regulations (eg ALARP), with which people are familiar and which have a legal precedent.
- **Measurement:** The Institution of Civil Engineers suggested that the absolute requirement for measurement at the UEAV should be reconsidered. Practical difficulties with measurement were also noted by some other employer organisations (eg Association of Train Operating Companies, Federation of Master Builders, British Beer and Pub Association).
- **Compliance and enforcement:** Some employers (eg British Beer and Pub Association) felt that practicalities would preclude compliance in some sectors, notably music and entertainment. The TUC emphasised that the regulations needed to be followed up with an effective enforcement strategy.

Section 3: Summary of comments received on Consultative Document 196 and recommendations for action

Questions posed in the CD	Number of respondents who:		Summary of main comments	Recommendations for action
	agree with proposal	disagree with proposal		
Q1. Do you agree with the proposal to allow employers to decide whether weekly exposure is appropriate?	72	10	Most respondents agreed that this should be left at the employers' discretion although the point was made that the decision should be informed by a competent person and justified in the organisation's risk management documentation. More help on calculating weekly exposure was requested by some respondents. Those who replied negatively (eg Noise Technology Co, Novartis Pharmaceuticals, Fulcrum Group, RNID) were concerned that weekly averaging would dilute employers' responsibilities and/or require additional training of managers. The RNID noted that, at the very least, weekly averaging should be used in consultation with employees.	To continue with proposal to allow employers to decide whether weekly exposure is appropriate in the regulations. To review guidance with a view to adding more examples of when weekly exposure may be appropriate, and include consultation with employees. To develop weekly exposure calculator alongside daily calculator on website.
Q2. Do you agree with our proposed approach to assessment and measurement?	63	10	Most respondents welcomed the simple approach proposed, although some (eg CBI) warned that employers would still resort to measurements because of the potential for civil litigation. Those responding negatively (eg RNID, Newcastle Occ Health, APIL, Home Office, individual respondents) felt mainly that the simple approach was too crude. One respondent (an independent consultant) felt that <i>not</i> requiring measurement at the LEAVs undermined the purpose of lowering the values, whereas others (ICE) felt that the absolute requirement for measurement at the UEAVs was unreasonable and over-implementing the directive.	The requirement for measurement at the UEAV was reviewed and removed from the Regulations. The Directive does not stipulate measurement at the UEAV, and our aim with the new Regulations and guidance is to encourage control at source rather than dwell on measurement.

Questions posed in the CD	Number of respondents who:		Summary of main comments	Recommendations for action
	agree with proposal	disagree with proposal		
Q3. Do you agree with our proposed approach to reassessment?	69	8	Most agreed with the basic proposals, but the need to recommend maximum intervals was mentioned as well as some additional criteria for re-assessment (eg changes in workforce). Some who answered negatively (Home Office, h&s professional) felt that reassessment should involve a complete re-run of the original assessment.	To review guidance with a view to suggesting maximum re-assessment periods and additional criteria for re-assessment.
Q4. Do you agree with our proposed approach on when to introduce health surveillance?	63	15	Most agreed with the proposed approach and felt the flexibility was sensible. However, more guidance on some aspects (eg definition of 'vulnerable workers', 'regularly exposed') was requested. Some of those responding negatively (eg FMB, independent civil engineer, leisure representative, ICE) felt the proposals were too burdensome for employers and questioned their practicality in sectors where turnover is large and/or control at source is not an option. Others (RNID, IOA members, BCDTA, Somerset Council) felt that employers would be unable to identify susceptible individuals, or that the proposals did not account for sporadic exposure.	To continue with proposed approach. We will provide more guidance on where health surveillance is appropriate.
Q5. Do you agree that health surveillance can continue to be carried out by a suitably qualified audiometrist?	80	5	Most agreed that we can continue with the present system. Those disagreeing felt that hearing loss should be seen in a wider context, and that this would require broader medical knowledge (Noise Technology Co, h&s professional); that clarification is needed on what is meant by health surveillance (MoD); or, that professional accountability is essential (consultant).	To continue with proposed approach. Broader medical issues can be considered by GP on referral. Guidance will be reviewed for what constitutes health surveillance, and the issue of professional accountability.

Questions posed in the CD	Number of respondents who:		Summary of main comments	Recommendations for action
	agree with proposal	disagree with proposal		
Q6. Do you agree that the two-year transition period is applied to all venues where/occasions when music (whether live or recorded) is played?	42	16	Most respondents agreed with proposals, noting that the transition period would give time to consider the practical issues facing the sector, and to use rapid equipment procurement/replacement cycles to cut exposure without negatively impacting on the business. Those disagreeing with the proposal felt that the risks have been recognised for some time and that the transition period may be seen by some as an extension to non-compliance. Some (eg Home Office, leisure representative) were not convinced that two years would be sufficient to help compliance in this sector, and others (eg BCDTA) were concerned that general industry will be more vulnerable to liabilities for civil claims for noise induced hearing loss from employees who work part-time in the entertainment sector. Although the question was essentially about the definition of the music and entertainment sector, few comments addressed this. Some felt that the proposed definition is too vague – TUC and Amicus felt it was too broad, the British Beer and Pub Association felt it was too restrictive. Distinguishing between amplified and unamplified instruments, applying the transitional period to music venues where dancing is a core function, and distinguishing between places of entertainment that are places of work and places of work where music is used to entertain, were suggested.	Suggestions for revised definition of music and entertainment have been considered but are either inappropriate (eg restricting to dancing venues would preclude orchestral performances) or insufficiently specific to be used as a basis for regulation. In the absence of more appropriate alternatives, it is recommended to continue with the proposed definition.

Questions posed in the CD	Number of respondents who:		Summary of main comments	Recommendations for action
	agree with proposal	disagree with proposal		
Q7. Do you agree with having a blanket transitional period for the music and entertainment sector?	38	16	Many respondents agreed with the proposed blanket transitional period for this sector, recognising that individual permissioning would create an unnecessary administrative burden on HSE, complicate enforcement, lead to confusion, and possibly place companies at a competitive disadvantage. Other comments related to the general need for the transitional period in this sector to allow practical controls to be considered and developed. Those who replied negatively were registering disagreement with the transitional period in principle, arguing that the transitional period should not apply to staff whom it is already practicable to protect (see Q6).	To continue with proposed approach for blanket transitional period, although guidance to state that where action can be taken earlier, it should.

Questions posed in the CD	Summary of main comments	Recommendations for action
Q8. Do you have any other comments on the draft regulations?	<p>Use of this category was made by many respondents to emphasise points made under specific questions. Other points related to:</p> <ul style="list-style-type: none"> • obsolete terminology ie the use of dB(A) and dB(C) • the potential for 87dB to be seen as a target, rather than getting exposure as low as reasonably practicable • whether a transitional period could be considered for workplaces where the customers create the noise • under-implementation of consultation and participation of workers and safety reps in the regulations • potential problems with the practical application of reg 7 (hearing protection) in pubs • retaining familiar language from current regs wherever possible • scope of regulations being insufficiently strict to cover all workers • welcoming the linking of the regulations to the current principles of prevention • insufficient acknowledgement of the dangers of tinnitus • concerns about noise that is outside the employer's control • under-implementation of provision for review of derogations • lack of moral justification for exempting some workers in reg 1 • material in the regulations being more suited to guidance. 	<p>The regulations have been amended to take account of comments on terminology and under-implementation of specific provisions, in particular consultation of workers and safety reps. The language has been amended where possible without altering the meaning of the legislation to that with which duty holders are familiar. Scope of regulations has been reviewed and judged to be appropriate. Other concerns will be addressed in the guidance where appropriate.</p>
Q9. Should the technical appendices be published as part of the guidance or be available separately on the HSE website?	<p>Keep together as part of guidance – 34 Both as part of guidance and available <i>free</i> on website – 32 Separately (overcomplicates an already lengthy document) – 26 Publish two versions of guidance, with and without technical appendices – 2</p>	<p>To keep together as part of guidance. Putting such large parts of priced guidance on the website for free download could detract from sales. A separate free leaflet for employers and an employee pocket card will be available free in hard copy or from the website.</p>

Questions posed in the CD	Summary of main comments	Recommendations for action
Q10. The draft guidance sites the regulations in part 1. Is this useful or does it make the guidance unnecessarily complicated?	Useful – 79 Unnecessarily complicated – 7	To retain current format.
Q11. Do you have any other comments on the draft guidance?	<p>Many of the comments made in this section were specific minor drafting changes which have been considered individually. More general comments included:</p> <ul style="list-style-type: none"> • more case studies and pictures would be helpful • employers should be made aware of their likely civil liability • quick reference guide could be helpful • examples focus on industrial noise – more on other sectors • need simple tools, downloadable from the HSE website, to help with calculations • glossary of symbols and meanings would be useful • more information needed on combination effects and familial susceptibility • should be available in a CD-Rom format with a keyword index for navigation • more information on tinnitus risk should be included • guidance relating to the effects of noise on hearing is very 'dry' • more on consultation with workers and safety reps • guidance issued should be industry specific to reduce unnecessarily complicating matters • term 'technically achievable' places a huge burden on anyone doing an assessment 	All the comments are being considered individually and incorporated into the guidance where appropriate. In particular, consideration is being given to inclusion of examples from a wider range of industries, the specific mention of consultation with workers and safety reps, and making the guidance more user-friendly. An interactive calculator for daily exposures is already available on the HSE website – a calculator for weekly exposures is being developed.

Questions relating specifically to audiometric testing

NB: response rates to these questions were generally low because of their specialist nature

Questions posed in CD	Number of respondents who:		Summary of main comments	Recommendations for action
	agree with proposal	disagree with proposal		
Q12. Do you agree with the proposed changes to the HSE categorisation scheme for noise induced hearing loss in annex 6?	22	3	Most felt the proposed changes to be helpful in terms of simplicity and transparency. Some comments were raised with regard to aspects of the proposed calculation methods and training needs of audiometrists. A few respondents felt that the changes would result in more referrals to doctors.	To continue with proposed approach – have considered comments but noted that most respondents agreed proposed changes to be an improvement on the current scheme.
Q13. Should the sample questionnaires and materials in appendix F to the guidance be available on the internet?	Yes – 27	No – 3	Those who answered ‘no’ felt that this is not necessary because of the limited audience	To remove the questionnaires and sample letters from the guidance and put onto the HSE website for free download. In this way, amendments can be easily accommodated, version control will be easier, and the guidance will become 8 pages shorter.
Q14. Do you think otoscopic examination is an essential component of an audiometric test?	27	5	Most respondents felt that otoscopic examination must be carried out to ensure that the ears are clear of obstruction and free of other problems which could influence an audiogram. However some concerns were raised about the level of training required to perform otoscopy correctly and safely.	To continue with proposed approach, but to clarify purpose of otoscopy and training requirements in separate guidance (see recommended action to Q15).

Questions posed in CD	Summary of main comments	Recommendations for action
Q15. Should HSE develop a brief guide as to what we consider 'appropriate training' for those conducting audiometric testing or is there already a suitable syllabus to follow?	Yes – 21 No, not necessary – 10	To develop a separate brief guide clarifying HSE's policy on training requirements which will be put on the HSE website.
Q16. In your view how well does the CD represent the different policy issues involved in this matter?	Very well / well – 50 Not well / poorly – 3 Most comments were favourable, indicating that the proposals were pragmatic. Of those who replied negatively, one felt the proposals went too far, another that they did not go far enough, and the third that more consideration should be given to other health issues relating to noise such as stress.	None
Q17. Is there anything you particularly liked or disliked about this consultation exercise?	Comments were few but included: <ul style="list-style-type: none"> • anxieties about the how evenly this will be applied and HSE's resources to monitor compliance • why print in 12pt Courier and create such a big paper document? • it would have been helpful if the response form were in a downloadable word format • a hard read, hope the guidance takes into account the critical SME market in its layout and presentation • whilst we recognise the added costs that will be imposed on employers for little clear health benefit, we congratulate HSE on the cost benefit analysis, it is a model of its type to be commended to other regulatory authorities. 	To pass on comments on format of CD and response form to colleagues in Communications Directorate.