

Health and Safety Commission Paper		HSC/07/08	
Meeting Date:	9 January 2007	Open Gov. Status:	Fully Open
Type of Paper:	Below the line	Paper File Ref:	HD/241/1024/2002
Exemptions:	None		

HEALTH AND SAFETY COMMISSION

Sound advice: Guidance for the music and entertainment sectors on the Control of Noise at Work Regulations 2005

A Paper by: Andrew Maxey, Noise and Vibration Programme Unit

Advisors: Elizabeth Gibby, Robert Vaughan, Tarla Patel (Injuries Reduction Programme)

Name of Board Member lead: Jane Willis

Cleared by CE/ DCE on 21 December 2006

Issue

1. Proposals for consultation on draft guidance intended to provide practical guidelines to help workers and employers in the music and entertainment sectors meet their legal obligations under the Control of Noise at Work Regulations 2005. The guidance is specifically required under the European Physical Agents (Noise) Directive and has been drawn up by representatives of workers and employers in the relevant sectors jointly with HSE.

Timing

2. For the 9 January meeting.

Recommendation

3. That the Commission:

- note the results of piloting of an earlier version of the guidance (**Annex B** – page 204 of the draft consultative document at **Annex 1**);
- agree to publication of the draft consultative document and draft guidance at **Annex A** (page 12) subject to further editing to make clearer the distinction between legal duties and good practice;
- agree we draw up a simple flyer given the length and complexity of the draft guidance.

Background

4. Paper HSC/05/01 set out the full background to the Control of Noise at Work Regulations 2005, which implemented the EU Physical Agents (Noise) Directive. Paper HSC/05/62 set out the general supporting guidance and communications plan for the Regulations as a whole. Some Members of the Commission provided comments on the general guidance. The guidance for general industry has been available since October 2005 and has been well received.

5. The Regulations came into force for most industry sectors on 6 April 2006. However regulation 1(a) allowed, in line with the Directive, a two-year transitional period for the music and entertainment sectors until 6 April 2008. The 'music and entertainment sectors' are defined as 'all workplaces where a) live music is played; or b) recorded music is played in a restaurant, bar, public house, discotheque, or nightclub, or alongside live music or a live dramatic or dance performance.'

6. The sector-specific guidance is required under article 14 of the Physical Agents (Noise) Directive. This requires member states to draw up, in consultation with social partners, a code of conduct providing for practical guidelines to help workers and employers in the music and entertainment sectors to meet their legal obligations. Having sought legal advice, the wording of article 14 is compatible with us implementing through guidance rather than by an Approved Code of Practice (ACoP). This recognises that the list of good practice options already provided (and being further developed through this consultation) will not always be appropriate in all circumstances, and that other actions may be equally valid. It therefore does not meet the Commission's published criteria for an ACoP.

7. The draft guidance for the music and entertainment sectors also contributes to HSE's long-term strategy under its Noise and Hand-arm Vibration Programme to reduce the incidence of noise-induced hearing loss by providing employers and workers with guidance on reasonably practicable measures to comply with the Regulations and control noise at work. While there are few officially recorded cases of noise-induced hearing loss among music and entertainment sector workers, there is anecdotal evidence of hearing damage among musicians, sound engineers etc (see RNID's website www.dontlosethemusic.com).

Argument

8. The consultative document at Annex A seeks wider comments on and suggested improvements to draft guidance already developed jointly with the various music and entertainment sectors, including rock and pop, orchestras, pubs and clubs and marching bands. The aim is to finalise relevant practical advice, agreed with the industry, on controlling noise at work in good time for April 2008. This will lead to a reduction in noise exposure at work in these sectors and consequently in new cases of occupational deafness and tinnitus.

9. The draft guidance has the working title *Sound advice* and is divided into two parts. Part One is general and includes chapters on hearing loss, responsibilities, freelancers (given the high levels of self-employment in the industry), planning events etc that all users should read. Part Two contains sector-specific guidance and includes chapters for venue owners/designers; amplified live music; pubs, clubs and similar venues; symphony orchestras; orchestra pits; studios; rehearsals; and music education. The guidance provides practical help for music and entertainment sectors on how to avoid damage to hearing. It is not intended to be a guide to the law since this already exists in L108 *Controlling noise at work*, but it does fulfil the need for bespoke practical guidance that meets the needs of this industry. Individual sectors, such as pubs or rock venues, may wish to use *Sound advice* as the basis for their own sector-specific guides.

10. A joint HSE/industry working group with wide representation has developed the guidance. The industry organisations involved include Arup Acoustics, Association of British Orchestras, Association of British Theatre Technicians, Bar Entertainment and Dance Association, BBC, BECTU, British Beer and Pub Association, Cameron Mackintosh Consultants, Chartered Institute of Environmental Health, Concerts Promoters Association, Design Interventions Ltd, English National Opera, Equity, Luminar Leisure, Ministry of Defence, Musicians Union, National Entertainment Safety Association, Production Services Association, Royal Opera House, Society of London Theatre Theatrical Management Association and two independents.

11. The working group has sought to ensure that the guidance is simple to read and understand by its intended audience, as well as consistent with the main messages in the general HSE guidance already published. As far as possible they wanted the guidance to be self-standing, but recognised that technical advisers may also need to refer to L108 *Controlling noise at work*. The working group has put a great deal of commitment into the draft document and has balanced concerns within the group. Many felt that the guidance needed to be all in one place, otherwise readers would not be aware of all related issues.

12. The guidance uses the term 'must' in relation to actions that are necessary to comply with the law and 'should' as good practice, where reasonably practicable, to help with compliance. Between now and the CD being published, HSE and the Chair of the working group will seek to further clarify the consistent use of the terms must and should. The CD also includes a specific question welcoming views on whether the guidance sufficiently clarifies between what employers and others must do to comply with the law and actions that they should take as good practice.

13. Communications Directorate confirm that they would also prefer one industry publication to multiple smaller documents for each individual sector. In line with our commercial strategy for priced publications (see Paper MISC/05/10), this would be a priced publication, but we also plan to make a version freely available through the HSE website (see para 28 of Paper HSC/06/63, an update on communications). It will be important to have clear signposting on the website so that a particular sector may download their section without missing other relevant aspects of the guidance.

14. There will also be a simple flyer targeted at employers, health and safety advisers and workers in the music and entertainment sectors. This would draw attention to the fact that the Control of Noise at Work Regulations apply to their industry from 6 April 2008, serve to draw people to the new guidance and give them an indication of the main contents of that guidance. We would seek to engage through attractive design, key bullet points and sources of further relevant information.

15. The working group also arranged for an earlier version of the guidance to be tested among representative end-users of the guidance between February and June 2006. In general their reactions were very positive and a number of points have now been incorporated into the draft guidance. An evaluation report is included at Annex B of the consultative document.

16. The purpose of this consultation exercise is to seek wider comments on the ease of use of the document, the practicality of the range of suggested control measures for each sector and to seek further suggestions for appropriate good practice that can be included in the final guidance. There is no duty for HSC to consult on guidance, but this will ensure an open and transparent approach to decision-making, allow widespread comment and meet the needs of those affected by the draft guidance. However, given the obligation in the Directive to have guidance, this consultation forms part of the implementation of the Directive. Failure to implement could incur infraction proceedings.

17. Advising formal consultees of the consultative document and making it available on HSE's website will also help to raise awareness of the range of options and possible solutions already identified to common causes of exposure to loud noise in the music and entertainment sectors. While the Control of Noise at Work Regulations do not come into force for these sectors until 6 April 2008, the advice should help them comply with the Noise at Work Regulations 1989, which remain in force up until the new Regulations come into effect.

18. Local authorities enforce noise at work legislation at a range of music and entertainment venues including nightclubs, theatres and pubs, but HSE enforces where a local authority is the dutyholder and at specific activities and premises including broadcasting, recording and filming.

19. The final guidance and solutions will feed into HSE inspector training and for consistency there will be liaison with the local authority stakeholders. Local authorities have a key role to play since they are responsible for enforcing the Control of Noise at Work Regulations at most music and entertainment venues. HSE has had meetings with LACORS to ensure a joined up approach on this guidance. LACORS is currently exploring the best ways for them to publicise the consultative document and final guidance among stakeholders and dutyholders. Through the working group, HSE also has willing stakeholders, including orchestras and relevant trade associations, who can promote the new guidance and help their members to implement it.

20. HSE hopes to publish the *Sound advice* guidance in December 2007, ahead of the Regulations applying to the music and entertainment sectors in April 2008.

Consultation

21. The Regulations have been in force for general industry since 6 April 2006 but allow a two-year transition period for the music and entertainment sectors. HSE has worked in close partnership with industry, trade unions and representatives of Environmental Health Officers from local authorities since 2003 when the directive was adopted (see paragraph 10). In addition the guidance has been piloted with thirteen end-users (see Annex B of the consultative document). Policy Group, Field Operations Directorate, Communications Directorate, Solicitor's Office and the Financial Policy Unit have been consulted on this paper.

Presentation

22. There is potential for negative coverage over controlling noise in the music and entertainment sectors and Lord Hunt has shown a particular interest in this issue. A

full communications plan and media-handling plan have already been prepared. This states clear messages, our target audience, how we are engaging with key stakeholders and gives robust lines to take. To mitigate the risk of negative coverage we will continue to engage proactively with key stakeholders. We have also provided regular updates for the Minister. HSC paper HSC/05/62 Annex B set out our draft communications plan, media-handling plan and question and answer brief for the Control of Noise at Work Regulations. This material was updated in April 2006 when the Regulations came into force, which coincided with a small communications campaign on the Regulations.

Costs and Benefits

23. The post-consultation Regulatory Impact Assessment is discussed in Paper HSC/05/01 and is on HSE's Noise web pages at <http://www.hse.gov.uk/noise/noise.pdf>.

Financial/Resource Implications for HSE

24. The estimated costs to HSE of producing this sector-specific guidance are:

- £67,000 in staff resources (full economic cost) over the life of the project until completion
- £10,000 direct costs for printing the priced guidance

HSE also welcomes and acknowledges the significant investment in terms of time, effort and money given by sector representatives on the working group.

Other implications

25. Other Member States also have to produce similar guidance and a European Forum, *Music – Safe and Sound*, is taking place in Dortmund on 16 and 17 January 2007 as a platform for sharing views and discussing solutions. Three members of our HSE/industry working group have been asked to present papers.

Next steps

26. Once the Commission has noted the draft guidance and agreed to wider public consultation, HSE will proceed with issuing a consultation document inviting comments between 1 February and 30 April 2007.