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HEALTH AND SAFETY COMMISSION

Update on outcome of consultation on Sound Advice guide for the music and entertainment sectors on the Control of Noise at Work Regulations 2005

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Cleared by CE on 3 December 2007

Issue

1. Update on development of practical guidelines to help workers and employers in the music and entertainment sectors comply with the Control of Noise at Work Regulations 2005. This guide is specifically required under the European Physical Agents (Noise) Directive (2003/10/EC).

Timing

2. In order to be available before the Control of Noise at Work Regulations come into force for this sector the Sound advice web-guide (at least) should be published by the end of March 2007.

Recommendation

3. That the Commission:

- agrees that a short flyer and website should be used as the primary means of raising awareness and providing guidance for this sector;
- agrees in light of consultation that in addition to the website a priced version of Sound Advice should be prepared and published as soon as possible after the launch of the web guide.

Background

4. The Control of Noise at Work Regulations 2005 apply to all sectors of industry including music and entertainment (defined as 'all workplaces where live music is played or recorded music is played in a restaurant, bar, public house, discotheque, or nightclub, or alongside live music or a live dramatic or dance performance). The Physical Agents (Noise) Directive allowed music and entertainment sectors a further

two year transitional period so that member states could prepare, with social partners, a “code of conduct” providing practical guidelines to help workers and employers in this sector comply with legal obligations. With the support of the HSE a working group of stakeholders from the music and entertainment sector (Annex 1 lists organisations represented) came together to prepare this guide.

5. A draft of this guide was put to the HSC on 9 January 2007 (Paper HSC/07/08). Commissioners commented that the draft guide contained much valuable, practical advice, but it was essential that this was not let down by presentation as a large heavy document, which made it seem impenetrable and off-putting. The HSC suggested that the guide be broken down into shorter sector-specific parts, and that industry support be ensured. The HSC decided that a comprehensive printed version as originally intended should not be consulted on at that stage.

Argument

6. Following that meeting and in consultation with HSE’s Communications Directorate and the industry working group, HSE repackaged the guide into a web format providing targeted practical advice for key sectors (orchestra and theatres, amplified live music, studios, schools and colleges, pubs and clubs marching bands and freelancers). The detailed guidance prepared by the working group was repackaged into information sheets entitled “Sound Advice Notes” (SANs) which could be downloaded by those that wished to read more on controls in particular sectors or on risk assessment, hearing protection, health surveillance etc.

7. Considerable efforts were made to ensure the web-guide was supported by industry stakeholders including the Association of British Orchestras (ABO), The Musicians Union, Theatre and Production agencies, pubs and clubs and others (a list of stakeholders involved is at Annex A). The guide was consulted on with over 400 industry stakeholders and individuals over the summer of 2007 (Misc paper 07/19 refers). This consultation was facilitated by HSE which also co-hosted or attended several stakeholder events to promote the guide. There were 122 responses to the consultation from individual musicians, safety representatives and theatre managers etc as well as from key stakeholder organisations (Musicians Union, Association of British Orchestras, Theatrical Managers Association, BBC, LACORS etc). The website was generally positively received with over 73% agreeing that it would help them control risks and 68% agreeing that it was user friendly or very user friendly.

8. However over 90% stated that they would want to be able to easily print all the Sound Advice Notes in one step and, 88% wanted to see a printed version. The main argument put by consultees was that, whilst the website is a useful facility, not all organisations or musicians and especially freelancers have easy access to the internet. Moreover given the nature of work in the sector it is not always possible to use internet based guidance or print off material during shows or on tour - a one stop hard copy would allow for this. This view was consistently and strongly put by all major stakeholders including Musicians Union, Broadcasting and Entertainments Union, Association of British Orchestras, Theatre associations and others.

9. There were many detailed comments on the website and the Sound Advice Notes and the industry working group and HSE are considering these. Some significant comments were:

- That if the guide is to be supported or endorsed by HSE it should take account of HSE's approach to sensible risk principles and overarching criteria for guidance and that it should be clear on what parts describe legal requirements and what are examples of good practice or recommendations from the working group. This is being addressed by the working group and HSE.
- Some TU organisations including the Musicians Union, BECTU and London based trades councils said that the guide should have the status of an approved code of practice. HSE's view is that the Directive's obligation for a "code of conduct" can more appropriately be met by sector guidance.

Presentation

10. As the coming into force of the Control of Noise at Work Regulations for this sector approaches the risk of negative media coverage is high. A strong media handling strategy has been developed to respond to this. It seeks to act in partnership with industry stakeholders and intermediaries to promote the message that sensible precautions can be taken to protect the hearing of performers and workers and that these will not be at the cost of continued enjoyment of music or its contribution to the UK economy. There are pressures from other organisations such as the RNID in particular who want to see more enforcement in this sector and greater public awareness about hearing health. HSE has met with RNID to discuss enforcement priorities and awareness raising.

11. Up to now spokespersons from the sector have made themselves available for media interviews where interest has been generated and have been able to promote the message that this is tackling real harm. This has helped to minimise adverse reaction. We are looking to continue working with stakeholders and other intermediaries to promote the launch of the guide. In addition to this a short explanatory flyer will be prepared to raise awareness of the application of the regulations to this sector, to provide reassurance and to direct readers towards the web-guide which will provide further advice and information. HSE and LACORS will also provide briefing to local authority enforcement officers for them to raise awareness during routine visits to premises concerned.

Costs and Benefits

12. The original post-consultation Regulatory Impact Assessment for the Control of Noise at Work Regulations considered the costs and benefits of these regulations to the whole economy including the music and entertainment sector. This was discussed by the HSC in Paper HSC/05/01 and is on HSE's Noise web pages at <http://www.hse.gov.uk/noise/noise.pdf>. The outcome of the consultation on the Sound Advice guide does not suggest that it should significantly add to those costs. Rather the guide is intended to help dutyholders comply with the Regulations through providing practical guidance and advice. The need for a further impact assessment is being reviewed with the Better Regulation Unit.

Financial/Resource Implications for HSE

13. 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; £15,000 direct costs for development of the web-guide; and £50,000 for media handling, awareness raising and promotion of the final guide in 2008. The production and distribution cost of the printed guidance and a small promotional flyer will be approximately £10,000 but these costs will be recoverable through the cover price of the guide. There has also been significant investment in terms of time, effort and money from sector representatives on the working group and the chair of the working group who have worked on this issue since the adoption of the Directive in 2003.

Other Implications

14. Local authorities enforce noise at work legislation at most music and entertainment venues. LACORS has attended the Working Group to discuss the revision of the guidance following the consultation exercise. LACORS is particularly concerned to ensure the guide is brought into line with HSE's publications policies and reflects sensible risk principles. It is also concerned that matters of enforcement, media interest and awareness raising are handled carefully. LACORS' experience is that it is difficult to consult all parts of the music and entertainment industry effectively, especially the very small pub or club venue operating open mike evenings etc. It is concerned to ensure that despite this, the guidance takes account of these operators as well as the larger chains etc. HSE and LACORS are discussing this issue to ensure the guide takes small venues into account. Subject to these concerns, LACORS agrees that the guidance should be made available in printed form. A single priced publication would be acceptable but LACORS would also like to see an easily printable electronic version.

15. LACORS and HSE are agreed that LAs should seek to raise awareness with dutyholders and allow them to absorb the Regulations and the industry guidance. From January 2008 LA EHOs have been asked to raise the Regulations during routine visits and to direct dutyholders to the web-guide when this becomes available. Enforcement advice will be issued to all local authorities and HSE will continue to work with LACORS and LAs to ensure enforcement is proportionate and targeted in line with the Enforcement Management Model.

Next steps in preparation of the guide

16. The industry working group is considering the comments made on the consultation. It should be possible to take account of changes to the web-guide in time for publication in Spring 2008. If the HSC agree to the recommendation that a printed guide should be made available this would take longer to develop and may not be available until the summer of 2008. The working group are aware and content with this timetable.

Members of the HSE Industry Working Group on Music and Entertainment

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
Two independents
HSE Noise and Vibration Programme
HSE Noise and Vibration Specialist Inspectors
Broadcasting, Entertainment, Cinematography and Theatre Union