

## Appendix 5: Dutyholders and enforcement

This information highlights specific issues Inspectors may need to take into account when enforcing on different dutyholders.

### (Sub) Contractors and small sites

The transient and/or short duration nature of many small sites may require a different enforcement approach in relation to INs. While the service of a site specific IN may be justified, the timescale of the work or the effect of an appeal may render it ineffective.

Site-specific INs should still be served where appropriate. Where this is not the case, an IN remains a valuable enforcement tool for ensuring sustained compliance. Inspectors should assess whether a dutyholder is likely to undertake similar noisy work in the future and the extent to which current issues raise concerns about longer-term compliance. Where these concerns are significant and enforcement is appropriate, an IN should be used to address underlying issues including:

- Assessing the risks **AND** implementing the findings of the assessment;
- Provision of adequate controls;
- Information, instruction and training (not required for the self employed);
- Maintenance, examination and testing of control measures.

Where issuing an IN remains problematic, an Inspector is entitled to remind the duty holder that, even though a notice has not been served, action is still required to deal with the contraventions identified. Any continuing non-compliance with legal obligations will be cited as an aggravating feature at sentencing in any future prosecution.

### Contractors management arrangements

Even where the right equipment is provided, control may not be achieved if underlying support arrangements are not in place; e.g. appropriate training on how to use controls in place. Inspectors should determine whether the employer has done everything reasonable or if a particular worker(s) is failing in their responsibilities. The table below provides some lines of enquiry.

**Table 6: Lines of enquiry for determining underlying failings**

Issue	Examples
Has the dutyholder provided the right conditions to ensure the controls are effective?	<ul style="list-style-type: none"> <li>• Are workers given a choice of hearing protection and is it appropriate for the work environment and in combination with other PPE?</li> <li>• Is equipment properly maintained and stored?</li> <li>• Are there effective supervision and management arrangements?</li> <li>• What should happen if things are not working and is action taken to support this?</li> </ul>

Is the training satisfactory?	<ul style="list-style-type: none"> <li>• Does the worker understand the risk?</li> <li>• Are they aware of the correct methods of work and the controls needed?</li> <li>• Do they know how to use these controls?</li> </ul>
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Where appropriate, Inspectors should consider taking enforcement action against individual workers (e.g. a PN) where the employer has complied with their duties but the worker is still creating a serious risk by failing to comply with their duties under HSWA S7.

### The self-employed

CNAWR applies to self-employed people with the exception of regulation 9 and 10. The guidance in this document should be applied as normal apart from those instances.

FFI does not apply to the self-employed where nobody else is affected. Inspectors should consider the extent to which other workers in the vicinity are being exposed – taking into account the factors in [Appendix 1](#). The risk to those workers may be the same as that to the self-employed individual – i.e. their long-term health could be affected by the repeated nature of such exposures (both previously and potentially in the future). These workers may also not be wearing hearing protection so that they would be unprotected. Exposures could be more significant due to this. Consequently, FFI charges would apply to material breaches in such circumstances.

The risk to members of the public in such circumstances is quite different. Their exposure is generally "transient" and usually brief. In addition, they are unlikely to experience repeated exposures. FFI is therefore unlikely to apply in most instances except for those highlighted in the [section below](#).

### Principal Contractors

There may be circumstances where it is appropriate to enforce against a PC even when they do not have employees directly involved in the work. In these situations, CDM should be used instead of CNAWR with reference to Section 3.

- **Competence:** Having competent people on site is key to preventing risk. A PC's competency assessment should ensure sub-contractors have appropriate arrangements to manage and control construction noise.
- **Construction phase plan:** A key duty of the PC is to properly plan the construction phase work and set out how key health and safety risks will be managed. The likelihood for high noise exposures where these risks are relevant should be indicated. The plan should include suitable and sufficient measures to address such risks, including any site rules. The level of detail should be proportionate to the risks involved. However, it is reasonable for the plan to contain brief site-specific statements. This might include:
  - The presence of noise risks / the different types / the tasks with the greatest risks;

- A statement on the control measures (or types of measures) that will be expected (possibly including more specifics for unusual / very high risk tasks);
  - A statement on the demarcation of hearing protection zones
  - Arrangements for managing / supervising these risks.
- **Implement and monitor:** Another key PC duty is to implement and monitor the plan to ensure that it works in practice. A PC should have appointed competent sub-contractors and is not therefore expected to undertake **detailed** supervision of their work. However, a PC must take appropriate action to deal with the risk where contractors do not work safely or comply with the plan.
  - **Risk control:** The main duty to control noise rests with the dutyholder that 'creates and own' this risk. This will often be a sub-contractor doing the work and not the PC. However, a PC, by virtue of their position, is 'a person in control' of the work on site. Some circumstances may therefore merit action against them under CDM reg 26(2). This requires every place, so far as is reasonably practicable, to be without risks to health for any persons at work there.

### **Designers and CDM Co-ordinators**

Inspectors should track back where significant issues are identified on site and reasonably practicable design solutions are evident. They should establish whether the designer / CDM-C have sufficient understanding of construction health risks. They should also verify that consideration of health risks are incorporated within design risk management arrangements.

### **Clients**

It is important that clients take a lead on ensuring management of noise issues, particularly on major projects. Where appropriate in line with the Division's plan of work, Inspectors should examine the extent to which the client has taken reasonable steps to ensure there is a suitable construction phase plan for the work that covers within it the issue of noise.

### **Issues affecting members of the public**

The risk of NIHL is generally linked to people who are regularly exposed to high noise levels over a period of time. While being exposed to noise over a short period can cause annoyance, disturbance and discomfort, such "transient" exposure is unlikely to produce long-term health effects in members of the public given the relative short duration / isolated nature of these instances. Issuing a PN solely for the protection of members of the public is therefore inappropriate. Environmental noise exposure is usually dealt with by local authority enforcing authorities and such standards can be strict.