

Environment, Planning and Countryside Committee

EPC(2) 10-06 (p1) Explanatory Memorandum

Environmental, Wales The Environmental Noise (Wales) Regulations 2006

Summary

The proposed Regulations will give the National Assembly for Wales the responsibility of preparing, reviewing and revising noise maps, except for maps applying to noise from non-designated major airports (in the UK all airports apart from Heathrow, Gatwick and Stanstead, which are designated airports) where the airport operators will fulfil this role. In addition, the Regulations will give the National Assembly for Wales responsibility for drawing up, reviewing and revising action plans (except for plans applying to places near major airports, where the airport operators will fulfil this role). Currently, no airport in Wales meets the threshold for the preparation of a noise map or production of an action plan as such noise mapping under the END is not required for airports in Wales.

As a result of implementing these Regulations, all legal responsibilities for the mapping and action planning under the END for roads, rail and agglomerations would rest with the National Assembly for Wales. In fulfilling these responsibilities the National Assembly for Wales may enter into agreements with other authorities and/or organisations to exercise functions relating to the production of maps and action plans, both in terms of data and the preparation of the maps and plans. The Regulations also cover issues such as the identification of major roads, major railways and agglomerations and set out what approach and which methodologies should be used and the general procedures by which noise maps and actions should be prepared.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to The Environmental Noise (Wales) Regulations 2006, in accordance with Standing Order 24.6.

2. A copy of the Instrument is submitted with this Memorandum.

Enabling Power:

3. The power enabling this Instrument to be made is contained in section 2(2) of the European Communities Act 1972. The National Assembly for Wales has been designated, under section 2(2) of the 1972 Act, to make Regulations for matters relating to the assessment, management and control of environmental noise, by virtue of the European Communities (Designation) Order 2006(SI 2004/706).

Effect

4. These Regulations implement Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise (the Environmental Noise Directive (END)). In order to transpose the Directive Member States must designate the competent authorities and bodies responsible for implementing the Directive, including the authorities responsible for:

- making and approving noise maps and action plans for large continuous urban areas (known as agglomerations), major roads, major railways and major airports; and
- collecting noise maps and action plans for submission when required to the European Commission.

5. The proposed Regulations will give the National Assembly for Wales the responsibility of preparing, reviewing and revising noise maps, except for maps applying to noise from non-designated major airports,(in the UK all airports apart from Heathrow, Gatwick and Stanstead, which are designated airports) where the airport operators will fulfil this role. In addition, the Regulations will give the National Assembly for Wales responsibility for drawing up, reviewing and revising action plans (except for plans applying to places near major airports, where the airport operators will fulfil this role). Currently, no airport in Wales meets the threshold for the preparation of a noise map or production of an action plan as such noise mapping under the END is not required for airports in Wales.

6. As a result of implementing these Regulations, all legal responsibilities for the mapping and action planning under the END for roads, rail and agglomerations would rest with the National Assembly for Wales. In fulfilling these responsibilities the National Assembly for Wales may enter into agreements with other authorities and/or organisations to exercise functions relating to the production of maps and action plans, both in terms of data and the preparation of the maps and plans. The Regulations also cover issues such as the identification of major roads, major railways and agglomerations and set out what approach and which methodologies should be used and the general procedures by which noise maps and actions should be prepared.

7. The Directive requires that by no later than 30 June 2007 Member States must complete strategic noise maps for all:

- agglomerations with more than 250,000 inhabitants;
- major roads with more than six million vehicle passages per year;
- major railways which have more than 60,000 train passages per year; and

- major airports with more than 50,000 movements (a movement being a take-off or landing) per year.

8. The mapping process will consider environmental noise from both the sources of noise and from the perspective of those exposed through a source – pathway – receptor methodology. This process investigates how the output noise is generated by the source, the ways the pathway through which the noise travels changes the propagation of noise and how the noise finally impacts on the receiver.

9. Action plans to manage noise for the above-named areas must be prepared by 18 July 2008. The production of action plans will engage all the relevant stakeholders in discussing the noise issues identified within the mapping process and will result in a comprehensive and agreed system for noise management in these areas. Public participation and consultation in their preparation is specifically required as one of the key objectives of the Directive is ensuring that information on environmental noise and its effects is made available to the public.

10. This process is then repeated five years later for agglomerations, major roads and major railways, but with lower thresholds. Consequently, a greater area of Wales will be captured by the need to make maps and action plans in 2012 and 2013 respectively.

Target Implementation

11. It is intended that the proposed Instrument be made on 3 October 2006 and come into force on 4 October 2006.

12. The Environmental Noise Directive (END) was adopted in June 2002, with the deadline for transposition into UK law being 18 July 2004. The European Commission delivered a reasoned opinion on 13 July 2005 to the effect that the UK had failed to transpose the Directive into domestic law. The UK Government have not contested the reasoned opinion.

13. The deadline for transposition was missed due to the large number of complex technical issues arising through policy discussions on implementation with other UK Government Departments. Transposition of the Directive in all devolved administrations has been delayed pending transposition in England, as the Department for the Environment, Food and Rural Affairs (Defra). Defra plan to lay Regulations in England by the end of August 2006, Scotland and Northern Ireland plan to lay Regulations by the October 2006.

14. Any delays in Wales, which cannot be attributed to the delay in preparing Regulations by the UK, will increase the risk of the National Assembly for Wales incurring fines for failure to transpose.

Financial Implications

15. The financial implications of implementing the END rest with the competent authority. In the case of

road, railway, industry and port sources the National Assembly for Wales has been designated the competent authority and therefore there are no financial implications for business or the voluntary sector. In the case of airports the operators themselves have been designated as the competent authority and as such would be responsible for producing strategic noise maps to cover this source. The END sets out certain requirements for those civil airports to be mapped including the number of aircraft movements at the airport and its proximity to large areas of populations. In addition airports operated by the military are excluded from the noise mapping requirements. Within Wales there are no airports which fall under these requirements and, as such, noise mapping under the END is not required. Therefore it is not envisaged that there will be any financial implications on the civil aviation sector.

16. Funding of £400k has been allocated for the 2006-7 financial year to undertake data gathering and the production of fit-for-purpose maps for submission to the European Commission in June 2007. This budget has been allocated under the Quality of the Environment Spending Programme Allocation within Environment, Planning and Countryside's Main Expenditure Group. The END also requires for action planning to be produced a year later, i.e. by 18 July 2008, with the entire mapping and action plan process being repeated again on a five year rolling basis, therefore requiring maps to be produced again in 2012. The financial implications of fulfilling this continuous programme have been highlighted and it is expected future budgets will be made available to fulfil these requirements. When the action plans are drawn up, they will be fully assessed for their cost implications on government, business and the voluntary sector.

17. A technical procedure to determine the costs of the strategic noise mapping exercise in throughout the UK has been undertaken with figures calculated on a disaggregated basis for each country. This process has based its calculations upon specified technical approaches and corresponding data availability in relation to the sources which are required to be mapped. In addition the costs involved in calculating how the number of people exposed to different levels of environmental noise, known as 'population exposure' has been estimated. This assessment forms part of the overall noise mapping process and is a requirement set out under the END. The procedure has calculated the preliminary cost for Wales for producing fit-for-purpose strategic noise maps and exposure assessments, in line with the requirements of the END, to be £400,000. This cost will be confirmed prior to the Regulatory Appraisal being produced in its final form.

Regulatory Appraisal

18. A regulatory appraisal has been carried out in relation to this Instrument and is attached.

Consultation

With Stakeholders

19. The Welsh Assembly Government held a twelve week consultation on the implementation of END between 22 February 2005 and 16 May 2005. Similar consultations were also held by Defra and the

other devolved administrations.

20. The Welsh Assembly Government received 18 formal responses to the public consultation, from a wide range of organisations and individuals. A list of the respondents is attached at Annex A to the RA., but included local authorities, transport industry representatives, transport and environmental consultancies, and support/lobby groups. The responses reflected a wide range of views and opinions.

21. The END is a complex directive relying heavily on the collection of data and computer technology to support the development of noise maps and action plans. The consultation posed 37 questions covering all aspects of implementation. Inevitably many of the issues are very technical and these were reflected in the comments received during the consultation.

22. There was broad agreement on most of the proposals in the consultation. On a small number of issues, the consultation responses raised questions about the approach proposed.

23. The consultation asked whether it was possible to suggest a level change in decibels at which a change could be viewed as sufficiently significant to trigger a review of action plans. Most respondents thought this would be difficult and highlighted a number of problems with attempting to do this, in particular, the difficulty in setting a single value as different types of noise have different effects and the need for additional research to develop a robust figure. In response to these concerns the Regulations do not set a noise value and further research is being commissioned to understand the effects of different noise sources.

24. In responding to questions on the generic approach to developing action plans to manage noise, a number of responses expressed concerns about assigning airport operators as the competent authority for producing noise maps for non-designated airports. The concerns related to whether the proposed arrangement led to a conflict of interest and whether the lack of a 'key body' to oversee all airport related action plans would mean a less effective approach. No airports in Wales require mapping or action planning in the first round, so this is not an issue for Wales at this time. However, the overall approach set out in the consultation is being maintained in recognition of the very different circumstances in which air transport operates compared with other modes of transport. In particular, they already have the expertise, data and methodology in place for the creation of noise maps. They also have consultative committees which include local authorities and other amenity representatives and these bodies will be able to address any perceived shortcomings. However, in order to address the concerns outlined in the consultation responses an additional safeguard has been included in the implementing regulations. The Regulations include a power for the National Assembly for Wales to amend or reject maps and action plans if it considers that it does not meet the requirements of the Directive and powers to require the (airport) competent authority to resubmit the maps or action plans remedying the shortcomings.

25. The consultation proposed that the Primary Route Network should provide the definition of the major roads to be mapped. Some responses felt that using this definition would fail to map a proportion

of road length whose flow exceeds the threshold for mapping. The Regulations have been amended to take account of these comments.

26. The consultation asked whether people agreed with the proposed approach for drawing up a rail noise action plan. A number of responses suggested that local authorities and transport operators should be more involved in the process. We have decided to maintain the arrangement proposed in the consultation document because this is the first time that noise mapping and action planning has been carried out on a national scale and there is a need to ensure consistency of approach and access to data. However, further consideration will be given to enabling a greater role to local authorities and transport agencies in future rounds of mapping once greater experience has been built up. Transport operators and local authorities will have a major role in providing input into the first round of action plans.

27. In addition to the public consultation described above, Defra, on behalf of all the UK Government and devolved administrations, invited noise mapping specialists to comment draft Regulations from a technical point of view in November 2005. This was not a formal consultation, but a focused opportunity to comment on technical intricacies of the Regulations. Defra received 27 formal responses to the technical consultation from a range of environmental noise specialists and noise mapping experts on the detail of noise assessment calculations and so on. This exercise provided a great deal of input in advising upon the varying technical approaches towards the strategic noise mapping process. Following on from this process and as a result of the wide ranging technical approaches that could be feasibly adopted it was decided to keep the technical content of the regulations to a minimum.

With Subject Committee

28. These Regulations were notified, via to the Environment Planning and Countryside Committee, via the list of forthcoming legislation on 5 October 2005 (EPC(2)-02-06 (p.3) item no.64, 63PE) and has remained on the list ever since. However, at that time the title of the legislation was The Noise (Assessment and Management) (Wales) Regulations 2005. The Regulations were identified for detailed scrutiny.

Recommended Procedure

29. Subject to the views of the Business Committee, I recommend that these Regulations procedure to Plenary under the Standard Procedure to give Members an opportunity to debate the Regulations

Compliance

30. I confirm that the proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 Section 120);

- be compatible with the Assembly's scheme for sustainable development (Section 121);
- be compatible with Community law (Section 106);
- be compatible with the Assembly's human rights legislation (Section 107);
- be compatible with any international obligations binding the UK Government and the Assembly (Section 108).

31. The information in this Memorandum has been cleared with the Legal Services Department

32. Drafting lawyer: Sean Bradley ext 3202.

33. Head of division: Matthew Quinn.

34. Drafting Policy Official: Nicola Britton, ext 3499

Carwyn Jones AM June 2006
Minister for Environment, Planning and Countryside