

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 2 – Senedd

Meeting date: Monday, 13 February
2017

Meeting time: 15.30

For further information contact:

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A stronger voice for Wales: Citizen panel (Informal session – Committee Room 1)

(14.00 – 15.00)

Break

(15.00 – 15.30)

1 Introduction, apologies, substitutions and declarations of interest
(15.30)

**2 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3**

(15.30 – 15.35)

(Pages 1 – 2)

CLA(5)–05–17 – Paper 1 – Statutory Instruments with clear reports

Negative Resolution Instruments

**SL(5)056 – The Regulation and Inspection Social Care (Wales) Act 2016
(Consequential Amendments to Secondary Legislation) Regulations 2017**

SL(5)059 – The Education (Student Support) (Wales) Regulations 2017



3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

(15.35 – 15.40)

Negative Resolution Instrument

SL(5)061 – The Noise from Audible Intruder Alarms (Wales) (Revocation) and Control of Noise (Codes of Practice for Construction and Open Sites) (Wales) Order 2017

(Pages 3 – 15)

CLA(5)–05–17 – Paper 2 – Report

CLA(5)–05–17 – Paper 3 – Government response

CLA(5)–05–17 – Paper 4 – Order

CLA(5)–05–17 – Paper 5 – Explanatory Memorandum

4 Paper to note

(15.40 – 15.45)

Procedure Committee of the House of Commons inquiry: Delegated powers in the 'Great Repeal Bill'

(Pages 16 – 17)

CLA(5)–05–17 – Paper 6 – Launch of Procedure Committee of the House of Commons inquiry: Delegated powers in the 'Great Repeal Bill'

Date of the next meeting

27 February 2017

Statutory Instruments with Clear Reports **Agenda Item 2**

13 February 2017

SL(5)056 – The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2017

Procedure: Negative

These Regulations are made under the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) and make amendments to secondary legislation as a consequence of the commencement of Parts 2 to 11 of the Act.

For example, Part 3 of the Act changed the name of the Care Council for Wales to Social Care Wales; these Regulations amend various pieces of secondary legislation by changing references to the Care Council for Wales to Social Care Wales.

Parent Act: Regulation and Inspection of Social Care (Wales) Act 2016

Date Made: 21 January 2017

Date Laid: 26 January 2017

Coming into force date: 3 April 2017

SL(5)059 – The Education (Student Support) (Wales) Regulations 2017

Procedure: Negative

These Regulations provide for financial support for students who are ordinarily resident in Wales taking designated higher education courses in respect of academic years beginning on or after 1 September 2017. They consolidate, but also make a number of changes, to the Education (Student Support) (Wales) Regulations 2015 as amended.

Parent Act: Teaching and Higher Education Act 1998

Date Made: 23 January 2017



Date Laid: 27 January 2017

Coming into force date: 17 February 2017



SL(5)061 – The Noise from Audible Intrusions (Wales) (Revocation) and Control of Noise (Codes of Practice for Construction and Open Sites) (Wales) Order 2017

Agenda Item 3.1

Background and Purpose

Under sections 71 and 104(1) of the [Control of Pollution Act 1974](#), the Welsh Ministers may approve codes of practice for the purpose of giving guidance on appropriate methods for minimising noise (which includes vibration) and the Welsh Ministers must approve such a code of practice for the carrying out of works to which section 60 of the Act applies. These works include building and roadworks, demolition, dredging and other works of engineering construction.

This Order approves the two parts of the British Standards Institution code of practice for noise and vibration control on construction and open sites. Open sites are defined in the code as sites where there is significant outdoor excavation, levelling or deposition of material.

Procedure

Negative

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument (Standing Order 21.2(x): that there appears to have been unjustifiable delay in publishing it or laying it before the Assembly).

- The Order was made on 24 January 2017 but was not laid before the Assembly until 2 February 2017.
- The Committee stresses the importance of laying instruments before the Assembly as soon as possible after they have been made by the Welsh Ministers. Those who are affected by legislation need to be made aware of that legislation as soon as possible, and laying instruments before the Assembly is an important part of making legislation available to the public.



Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

6 February 2017



**THE NOISE FROM AUDIBLE INTRUDER ALARMS (WALES) (REVOCATION)
AND CONTROL OF NOISE (CODES OF PRACTICE FOR CONSTRUCTION AND
OPEN SITES) (WALES) ORDER 2017**

Government Response

The Welsh Government notes the Constitutional and Legislative Affairs Committee's technical report on the Noise from Audible Intruder Alarms (Wales) (Revocation) and Control of Noise (Codes of Practice for Construction and Open Sites) (Wales) Order 2017. The delay between the making and laying of this Order is due to an unfortunate administrative oversight.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2017 No. 81 (W. 30)

PUBLIC HEALTH, WALES

**The Noise from Audible Intruder
Alarms (Wales) (Revocation) and
Control of Noise (Codes of Practice
for Construction and Open Sites)
(Wales) Order 2017**

EXPLANATORY NOTE

(This note is not part of the Order)

Under sections 71 and 104(1) of the Control of Pollution Act 1974, the Welsh Ministers may approve codes of practice for the purpose of giving guidance on appropriate methods for minimising noise (which includes vibration) and the Welsh Ministers must approve such a code of practice for the carrying out of works to which section 60 of the Act applies. These works include building and roadworks, demolition, dredging and other works of engineering construction.

This Order approves the two parts of the British Standards Institution code of practice for noise and vibration control on construction and open sites. Open sites are defined in the code as sites where there is significant outdoor excavation, levelling or deposition of material.

This Order also revokes the Control of Noise (Codes of Practice for Construction and Open Sites) (Wales) Order 2002 (S.I. 2002/1795 (W. 170)) and the Control of Noise (Code of Practice on Noise from Audible Intruder Alarms) Order 1981 (S.I. 1981/1829).

The Welsh Ministers' Code of Practice on the carrying out of regulatory impact assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order.

The approved codes of practice can be obtained in person or by post from the British Standards Institution at the Customer Services Sales Department, BSI, 389

Chiswick High Road, London W4 4AL; telephone 020 8996 7000.

The ISBN numbers for the approved codes of practice are as follows:

BS 5228-1:2009	ISBN 978 0 580 77749 3
BS 5228-2:2009	ISBN 978 0 580 77750 9

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2017 No. 81 (W. 30)

PUBLIC HEALTH, WALES

**The Noise from Audible Intruder
Alarms (Wales) (Revocation) and
Control of Noise (Codes of Practice
for Construction and Open Sites)
(Wales) Order 2017**

Made 24 January 2017

*Laid before the National Assembly for
Wales* 2 February 2017

Coming into force 24 February 2017

The Welsh Ministers, in exercise of the powers conferred by sections 71 and 104(1) of the Control of Pollution Act 1974⁽¹⁾ and vested in the Welsh Ministers⁽²⁾, make the following Order:

Title, commencement and application

1.—(1) The title of this Order is the Noise from Audible Intruder Alarms (Wales) (Revocation) and Control of Noise (Codes of Practice for Construction and Open Sites) (Wales) Order 2017.

(2) This Order comes into force on 24 February 2017..

(3) This Order applies in relation to Wales.

Approval of code of practice

2. The following parts of the British Standards Institution code of practice for noise and vibration control on construction and open sites, numbered BS

(1) 1974 c. 40.

(2) The functions of the Secretary of State in so far as exercisable in relation to Wales were transferred to the National Assembly for Wales under article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and thereafter to the Welsh Ministers under section 162 of, and paragraphs 30(1) and 30(2)(a) of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

5228, are approved for the purpose of giving guidance on appropriate methods for minimising noise from those sites—

- (a) Part 1: Noise, numbered BS 5228-1:2009, as amended by Amendment No. 1, which came into effect on 21 February 2014;
- (a) Part 2: Vibration, numbered BS 5228-2:2009, as amended by Amendment No. 1, which came into effect on 3 June 2014.

Revocation

3. The following Orders are revoked in relation to Wales—

- (a) The Control of Noise (Codes of Practice for Construction and Open Sites) (Wales) Order 2002⁽¹⁾; and
- (b) The Control of Noise (Code of Practice on Noise from Audible Intruder Alarms) Order 1981⁽²⁾.

Lesley Griffiths
Cabinet Secretary for Environment and Rural Affairs,
one of the Welsh Ministers
24 January 2017

(1) S.I. 2002/1795 (W. 170).
(2) S.I. 1981/1829.

Explanatory Memorandum to the Noise from Audible Intruder Alarms (Wales) (Revocation) and Control of Noise (Codes of Practice for Construction and Open Sites) (Wales) Order 2017

This Explanatory Memorandum has been prepared by the People and Environment Division of the Welsh Government and is laid before the National Assembly for Wales in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Noise from Audible Intruder Alarms (Wales) (Revocation) and Control of Noise (Codes of Practice for Construction and Open Sites) (Wales) Order 2017. I am satisfied the benefits justify the likely costs.

Lesley Griffiths
Cabinet Secretary for Environment and Rural Affairs, one of the Welsh Ministers
2 February 2017

1. Description

- 1.1 The Noise from Audible Intruder Alarms (Wales) (Revocation) and Control of Noise (Codes of Practice for Construction and Open Sites) (Wales) Order 2017 (“the 2017 Order”) revokes the Control of Noise (Code of Practice on Noise from Audible Intruder Alarms) Order 1981 (“the 1981 Order”) in respect of Wales, and revokes and replaces the Control of Noise (Codes of Practice for Construction and Open Sites) (Wales) Order 2002 (“the 2002 Order”).

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

- 2.1 None.

3. Legislative Background

- 3.1 The Welsh Ministers make this order in exercise of the powers conferred by sections 71 and 104(1) of the Control of Pollution Act 1974. These powers were transferred to the National Assembly for Wales under Article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) and thereafter to the Welsh Ministers under section 162 of, and paragraphs 30(1) and 30(2)(a) of Schedule 11 to, the Government of Wales Act 2006.

Intruder alarms

- 3.2 Section 71(1) of the Control of Pollution Act 1974 (“COPA 1974”) gives the Welsh Ministers the power to approve such codes of practice which in their opinion are suitable for the purpose of giving guidance on minimising noise. The Code of Practice on Noise from Audible Intruder Alarms 1982 (“the Code”) was developed to give guidance on the installation and the use of intruder alarms. It set out best practice in avoiding causing noise nuisance from intruder alarms, such as:
- minimising the likelihood of false alarms by correct fitting and maintenance;
 - reducing the duration of ringing by fitting a 20-minute cut-out; and
 - reducing the time before the alarm is deactivated by proposing a key-holder registration system in conjunction with both the police and the Local Authority.

The Code was approved by Order under section 71 of COPA 1974 in 1981 and covered England, Scotland and Wales.

- 3.3 Section 79(1)(g) of the Environmental Protection Act 1990 (“the EPA”) provides noise emitted from premises which is prejudicial to health or a nuisance is a statutory nuisance. Under section 80(7) of the EPA, businesses

have a defence against nuisance action if they are able to prove the “best practicable means” were used to prevent or to counteract the effects of the nuisance. Section 79(9) of the EPA provides regard must be had to a code of practice issued under section 71 of the Control of Pollution Act 1974 when interpreting “best practical means”.

- 3.4 Under section 77 of the Clean Neighbourhoods and Environment Act 2005 (“the CNEA”), Local Authorities now have powers of entry to silence alarms after 20 minutes of continuous sounding or 1 hour of intermittent sounding. In addition, section 69 of the CNEA gives a Local Authority the power to designate all or part of its area as an alarm notification area. If premises are in an alarm notification area and an audible intruder alarm has been installed, then the occupier, or owner if there is no occupier, must nominate a key holder in respect of the premises and notify their details to the Local Authority in writing (section 71(2) of the CNEA). Guidance has been issued on the intruder alarm noise powers available to Local Authorities under the CNEA (<http://webarchive.nationalarchives.gov.uk/20130402151656/http://archive.defra.gov.uk/environment/quality/local/legislation/cnea/documents/noise.pdf>).
- 3.5 The Code covered subject matter which now comes under the CNEA and has also been superseded by British and European technological standards for intruder alarms. The Control of Noise (Code of Practice on Noise from Audible Intruder Alarms) (Revocation) (England) Order 2014 therefore revoked the 1981 Order and withdrew the Code in respect of England. The 2017 Order revokes the 1981 Order and withdraws the Code in respect of Wales.

Construction sites

- 3.6 Under section 71(2) of COPA 1974 the Welsh Ministers are required to approve a code of practice by order which they consider suitable for the purposes of providing guidance on appropriate methods for minimising noise on construction sites. The Welsh Ministers may also approve other codes of practice providing guidance on minimising noise from other kinds of sites. Under COPA 1974 “noise” includes “vibration”.
- 3.7 British Standard BS 5228 recommends procedures for noise and vibration control in respect of construction works. In Wales, the 2002 Order approved four parts of BS 5228 as codes of practice relating to noise and vibration from construction works.
- 3.8 Section 60 of COPA 1974 gives Local Authorities the power to serve a notice upon works of construction or demolition, imposing requirements as to the way in which the works are to be carried out to reduce noise impacts and avoid causing potential nuisance. Section 61 allows for a person who intends to carry out construction works to apply to the Local Authority for consent to follow their own noise management plan. If the Local Authority considers the application contains sufficient information, and considers if the works are carried out in accordance with the application it would not serve a notice under section 60, then it should give its consent.

- 3.9 When using its powers under section 60 of COPA 1974, a Local Authority must have regard to relevant provisions of any code of practice approved by the Welsh Ministers and issued for the purpose of giving guidance on appropriate methods for minimising noise. This means Local Authorities must have regard to the approved code (BS 5228) when imposing requirements on works of construction or demolition under section 60 of COPA 1974. Similarly, contractors will refer to BS 5228 when drawing up their own noise management plans under a Section 61 application. Approving the latest British Standard gives those working in the construction industry more certainty as to whether the requirements placed upon them by a section 60 notice are reasonable, since it makes it clear the appropriate reference point is the latest and most up to date version of BS 5228. This would inform whether they would have grounds to appeal such a notice.
- 3.10 Local Authorities also have a duty to serve a noise abatement notice to stop noise emitted from premises which is prejudicial to health or a nuisance under section 79 of the EPA. If a developer or construction business were to appeal an abatement notice or be prosecuted under this legislation, the courts must have regard to the approved code in determining whether “best practicable means” have been employed to minimise noise impacts. Therefore, approving the latest version of BS 5228 gives the construction industry greater confidence by following the most up-to-date standard they will be less likely to be found guilty of causing a statutory noise nuisance.
- 3.11 BS 5228 was most recently approved in Wales by the 2002 Order. However, two new and improved versions have been issued since then, in 2009 and 2014. These updates streamlined BS 5228 into two parts of a single code, one part relating to noise and the other relating to vibration. The Control of Noise (Code of Practice for Construction and Open Sites) (England) Order 2015 approved the latest version of BS 5228 in respect of England. The 2017 Order does so in respect of Wales.
- 3.12 The 2017 Order is subject to negative resolution procedure and does not amend primary legislation.

4. Purpose and Intended Effect of the 2017 Order

- 4.1 Revoking the 1981 Order in respect of Wales makes it clear the Code has been superseded by principles set out in more recent primary legislation and industry standards.
- 4.2 By revoking the 2002 Order, out-of-date British Standards which have been withdrawn by the British Standards Institution will no longer be an approved code of practice in Wales.
- 4.3 Adopting the current version of BS 5228 in Wales as an approved code of practice giving guidance on appropriate methods for minimising noise from construction and other outdoor work gives the construction industry greater

confidence by following the most up-to-date standard they will be less likely to be found guilty of causing a statutory noise nuisance.

5. Regulatory Impact Assessment

- 5.1 No impact assessment has been produced in relation to the revoking of the 1981 Order as no impact on the private, voluntary or public sectors is foreseen.
- 5.2 With regard to revoking the 2002 Order and replacing it with an Order adopting the current version of BS 5228 as an approved code of practice, the Department for Environment, Food and Rural Affairs (Defra) carried out an impact assessment prior to adopting it in England in 2015. The impact assessment is available to view at <http://www.legislation.gov.uk/ukxi/2015/227/impacts>. Defra concluded approving the latest version of BS 5228 would have a zero cost to business, as evidence had shown the construction industry was already using it irrespective of Secretary of State approval. Even in its high cost scenario, based on 450 environmental impact assessments being required in England for noise each year, Defra anticipated the total cost to business across England to be no higher than £29,442 per year. The average number of environmental impact assessments required under the planning regime in Wales over the three years from 2013-2016 was 128 per year. This would suggest, in an equivalent high cost scenario, the total cost to business across Wales from approving the latest version of BS 5228 would be expected to be no higher than £8,375 per year.
- 5.3 However, two years on from Defra's impact assessment, the use of the latest version of BS 5228 should be even more firmly entrenched than it was in 2015, and a zero cost to business is considered more likely. Nor is formally approving the latest version of BS 5228 in Wales likely to change the noise environment or generate significant benefits to the public. However, it will give people working in the construction industry greater certainty by following this version they are less likely to be penalised under noise management legislation.

6. Consultation

- 6.1 Prior to preparing the 2017 Order, the Welsh Government informally consulted environmental health practitioners in Local Authorities across Wales, and received no objections to what was proposed. The Welsh Government has also consulted the chair of the British Standards committee responsible for the current standards on noise and vibration control on construction and open sites, to confirm there are no further changes being planned.
- 6.2 A wider consultation exercise was carried out by the British Standards Institute prior to issuing the current BS 5228, and by UK Government, including with UK-wide stakeholders such as the trade association for the

private security industry in the UK, BSIA, and the National Security Inspectorate (NSI), neither of which raised objections to withdrawing the Code, prior to introducing these changes in England in 2014 and 2015. (See <http://www.legislation.gov.uk/uksi/2014/2123/memorandum> and <http://www.legislation.gov.uk/uksi/2015/227/memorandum> for details.)

7. Competition Analysis

- 7.1 The 2017 Order will not affect business, charities and/or the voluntary sector in ways which raise issues relating to competition.

8. Post-implementation Review

- 8.1 The approved Codes of Practice for Construction and Open Sites will be reviewed at such time as the corresponding British Standards are amended, or at such time as a need to review them again becomes apparent from evidence provided by local government or industry stakeholders.

Agenda Item 4.1

Delegated powers in the 'Great Repeal Bill' inquiry launched

 www.parliament.uk/business/committees/committees-a-z/commons-select/procedure-committee/news-parliament-2015/delegated-powers-great-repeal-bill-launch-16-17/

The Procedure Committee of the House of Commons is launching an inquiry into the delegated powers likely to be claimed by the Government in its proposed Great Repeal Bill.

- [Inquiry: Delegated powers in the 'Great Repeal Bill'](#)
- [Procedure Committee](#)

The bill, announced to the House in October 2016, is to be introduced in the 2017–18 Session. It is to repeal the European Communities Act 1972 and convert the existing body of EU law to domestic law. The Government states that this approach is to "preserve the rights and obligations that already exist in the UK under EU law and provide a secure basis for future changes to our domestic law."

The Committee proposes also to examine the scrutiny mechanism necessary for the House of Commons to exercise effective oversight of the use of the powers it has delegated.

Chair of the Procedure Committee, Charles Walker OBE MP, said:

"The Great Repeal Bill will be one of the most significant pieces of legislation that MPs will have had to deal with in recent years. Incorporating the vast number of EU regulations and decisions into our domestic law will be a mammoth task.

It is vital, however, that the government does not use the bill as an excuse to give itself unfettered delegated powers. Therefore my Committee will be working to ensure that the House of Commons is properly able to scrutinise not only the conversion process but also any future changes to former EU law the Government may wish to make under these powers."

Call for evidence

As part of the inquiry, the Procedure Committee invites written evidence on any or all of the following issues:

- The adequacy of the present procedure for scrutiny of secondary legislation, and potential approaches for sifting the potential volume of legislation to be incorporated
- The changes (if any) desirable to Commons procedures related to the delegation of powers or secondary legislation to address the likely scale and volume of 'Great Repeal Bill' legislation
- The powers likely to be necessary or justified in primary legislation to incorporate the existing body of EU legislation (the *acquis communautaire* or *acquis*) into domestic law upon repeal of the European Communities Act 1972 (ECA), including (but not necessarily limited to):
 - powers to ensure the continuation in UK law of the legal order in force upon repeal of the ECA, with only such amendments as are necessary to ensure that the law applicable in the UK continues with the same effect);
 - powers to amend domestic primary and secondary legislation implementing EU obligations in line with Government policy objectives, following the cessation of those obligations and the repeal of the ECA);
 - powers to amend, in line with Government policy objectives, provisions of EU law presently given direct effect in UK law by operation of the ECA, following the incorporation of those provisions into UK law

- Whether so-called "Henry VIII" powers are likely to be necessary or justified in this respect; whether alternative drafting techniques may produce the same effect; and whether there are any areas of the acquis or existing domestic legislation which should be off limits to such powers
- Whether a time limit should be set upon the availability of any powers delegated for these purposes

Following this initial phase of the Committee's work, it is anticipated that the Committee will go on to examine the provisions of the Bill as introduced in the 2017–18 Session.

Deadline

Written evidence to the initial stage of the Committee's inquiry will be accepted, via the Committee's inquiry page, up to **Friday 24 February 2017**.