

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.