

Explanatory Memorandum to Environmental Noise (Wales) (Amendment) Regulations 2009

This Explanatory Memorandum has been prepared by Environment Sustainability and Housing and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

(i) Description

This instrument amends the Environmental Noise (Wales) Regulations 2006 which transposes Directive 2002/49/EC on the assessment and management of environmental noise, also known as the Environmental Noise Directive (END). A number of amendments are made, which largely reflect both policy advances in the field of environmental noise, while still fulfilling the transposition requirements of the Directive. Amendments to the regulations include inserting/amending a number of definitions, allowing noise sources identified for future noise mapping to be published in the form of maps, allowing quiet areas to be identified as part of the agglomeration action planning process, providing ministers with the power to produce consolidated maps and replaces ministers duty to publish action planning guidance with a power to do so. The regulations apply to Wales only, although similar amendment regulations are currently being considered in England by Defra.

(ii) Matters of special interest to the Subordinate Legislation Committee

None

(iii) Legislative Background

These regulations are made under section 2(2) of the European Communities Act 1972. This section allows designated persons to implement EC obligations of the United Kingdom by making subordinate legislation. The Welsh Ministers have been so designated in relation to measures relating to the assessment, management and control of environmental noise.

The Environmental Noise (Wales) Regulations 2006 (No. 2629 (W.225)) (the 2006 regulations) transpose the provisions of the Directive.

These regulations amend the 2006 Regulations

This SI follows the negative procedure.

(iv) **Purpose and intended effect of the legislation**

'Environmental noise' is defined in Directive 2002/49/EC relating to the assessment and management of environmental noise (often referred to as the Environmental Noise Directive (END)).¹ as: 'unwanted or harmful outdoor sound created by human activities, including noise emitted by means of transport, road traffic, rail traffic, air traffic, and in agglomerations, noise from industry and ports'.

The END applies to environmental noise to which humans are exposed, but it specifically excludes noise created by the exposed person, noise from domestic activities, neighbour noise, noise at workplaces, noise inside means of transport and noise from military activity in military areas.

The objective of the END is to provide for the comprehensive collection and analysis of data to prevent further deterioration in the environmental noise climate and to improve it where possible. The data collection and analysis would allow Member States and the European Commission to determine at each level:

- how much noise is affecting how many people; and
- the most cost effective measures or combinations of instruments to reduce the level of environmental noise affecting people.

The END introduces a new regime of strategic noise mapping and subsequent action planning for major roads, railways, airports and agglomerations in all Member States. The END, adopted by the European Parliament and the Council of the European Union on 25 June 2002, was transposed into Welsh law by the Environmental Noise (Wales) Regulations (hereafter referred to as the '2006 Regulations') which came into force on 4 October 2006.² The objective of the legislation is to transpose the END accurately, transparently and in the least onerous manner consistent with the END's requirements, while providing a process which is fit for Wales. The END is being implemented separately in Wales, England, Scotland and Northern Ireland. Throughout the first stages of the implementation of the 2006 Regulations it has become apparent that some amendments are required in order to fulfil the above objectives.

A number of amendments to the 2006 Regulations are proposed, which largely reflect policy advances in the field of environmental noise, while still fulfilling the transposition requirements of the Directive.

The first amendment deals with the updating and correcting typographical errors in the definitions listed at the beginning of the 2006 Regulations.

¹ http://eur-lex.europa.eu/pri/en/oj/dat/2002/l_189/l_18920020718en00120025.pdf

² Refer Annex A or <http://www.opsi.gov.uk/legislation/wales/wsi2006/20062629e.htm>

The second amendment enables identified noise sources to be published in the form of maps instead of being listed in regulation.

The Directive requires that all noise sources to be mapped in the second round of mapping have to be reported to the Commission by 31 December 2008 but is not prescriptive in the method Member States should use to list these identifications and make them available to the public. The 2006 Regulations currently require these identifications to be listed in regulation before being reported back to the Commission. This unnecessarily onerous procedure puts pressure on the already challenging deadlines set out in the Directive.

The third amendment is for quiet areas to be identified as part of the agglomeration action planning process allowing more local stakeholder involvement, rather than being listed in regulation using a centralised approach.

The Directive specifically states that action plans shall aim to protect quiet areas in agglomerations from an increase in noise. The Directive does not set out criteria for quiet areas and Member States are free to designate quiet areas. The Directive also covers quiet areas in open country, which it defines as meaning an area, identified by the competent authority, that is undisturbed by noise from traffic, industry or recreational activities. The Commission does not lay out specific requirements for the protection of quiet areas in open country, although the Commission is required to report their protection and the need for further Community actions by July 2009.

The 2006 Regulations require the Welsh Ministers to have identified (in the form of regulations) quiet areas in the first round agglomerations by 30 September 2007. This was based on proposals in a consultation in 2005 by Transport Research Laboratories (TRL), which suggested that noise maps will not be able to definitively identify quiet areas but that the maps might be able to identify potentially quiet areas which might benefit from protection from an increase in noise. The proposal in the consultation was that two criteria might be used to identify potentially quiet areas in agglomerations:

- using relevant land use maps for the agglomeration, identify appropriate areas for designation as potentially quiet areas (e.g. certain recreational spaces), and
- an acoustic threshold identifying areas not exposed to a value of L_{day} greater than 55dB(A) from any individual noise source considered under the END (i.e. noise from roads, rail, air transport, industry and ports).

Following the TRL consultation into quiet areas³ it was concluded that:

³ Research into quiet areas, recommendations for identification, September 2006, <http://www.defra.gov.uk/environment/noise/research/pdf/quiet-areas.pdf>

- Based on review of over 60 relevant papers there is too little research information available to allow the identification of quiet areas purely on the basis of acoustical criteria;
- Although distance based criteria have been used in a number of studies, the reasoning behind the selected criteria has not been explicitly explained. Further research would be needed to determine the selection criteria for the distances used. Therefore, the robustness of these methodologies is uncertain;
- Some EU Member States are beginning to clarify their own interpretations of the definitions for quiet areas used in the END. However, there is not a common definition in use.

The research highlighted the difficulties in developing precise, widely applicable definitions for a quiet area in agglomerations or open country. The TRL research recommended that procedures for identifying quiet areas should offer some flexibility to allow 'local' requirements to be taken into account.

The fourth amendment is to provide the Welsh Ministers with the power to produce consolidated noise maps when considered necessary.

The Directive does not specify any requirement regarding consolidated maps to be produced by the Member States. The 2006 Regulations currently do not give the Welsh Ministers the power to produce consolidated maps should they be considered necessary for the action planning process.

The fifth amendment is to revoke the duty of Welsh Ministers to publish guidance and replace it with a power for Welsh Ministers to publish guidance under Regulation 30 and imposes a duty on competent authorities to have regard to any guidance produced. As competent authority Welsh Ministers are essentially producing guidance for themselves, which may not always be necessary or worthwhile.

(v) Implementation

The regulations will come into force on 9 February 2008. Similar regulations are being considered by Defra in England. Should the amendment regulations be annulled then Wales would risk domestic Judicial Review proceedings being brought against the WAG for failing to meet deadlines in our domestic regulations.

(vi) Regulatory Impact Assessment

a) Options (for achieving the policy objective – as set out in paragraph (iv) above)

There are two options available for consideration:

Option 1: Do nothing

This is the proposal in the WAG consultation issued in 2005 and is the requirement currently set out in the legislation. Identifications of noise sources to be mapped in the future are listed in regulations. Quiet areas would be designated by the Welsh Ministers, based upon national criteria determined by WAG. A detailed proposal would need to be worked up and consulted on. However since there is no agreed national or international method of defining quiet areas, this approach could prove controversial and could lead to challenges from local authorities regarding the designations of quiet areas. It is also not a good fit with current policy approaches to local government and land-use and transport planning. There is no provision within the regulations to allow for the production of consolidated maps should they be considered necessary and possible to aid with the action planning process. The WAG has a duty to publish action planning guidance, but as the competent authority for the implementation of END is essentially producing guidance for itself, which may be unnecessary.

Option 2: Make proposed amendment regulation

Maps are published showing the noise sources identified for mapping. Publishing maps of the identified areas rather than listing them in regulation will allow the public and stakeholders to more easily assess the boundaries of the areas that have been identified for future mapping. Such an approach is consistent with the way in which information is disseminated under the strategic mapping exercise. Under the current regulatory approach, maps would have to be produced in any case to inform the lists that would need to be made in regulation.

Quiet areas are to be identified as part of the action planning process with help and advice from local authorities and interested stakeholders. In the absence of an agreed international or EU definition of quiet areas, involving the local authorities and stakeholders as part of agglomeration action planning process will provide a better opportunity for places of local significance to be protected against an increase in noise. This is a more flexible approach that will allow more local engagement than the requirements under the existing regulations. It is also in keeping with policy approaches to local government and land-use and transport planning.

A power is provided for Welsh Ministers to produce consolidated noise maps. If produced reliably, consolidated maps could provide an important tool for the action planning process and could also aid with the identification of quiet areas.

Replace the duty to publish guidance with a power to publish guidance. As the WAG is the competent authority they are essentially providing guidance for themselves, which may not always be useful. It is not seen as necessary to remove the need to produce action planning guidance completely as the publication of strategic guidance may also provide a further tool for disseminating information to the public and stakeholders about the action

planning process and will allow early engagement in this process through consultation exercises.

The proposed amendments will bring our regulations in line with those of the other Devolved Administrations in Scotland and Northern Ireland.

This is the favoured option and would require an amendment to the 2006 Regulations.

b) **Benefits**

Option 1: Do nothing

There are few benefits implicit in this option.

Noise sources identified for future noise mapping would have to be listed in regulation rather than published in a map. A list in regulation could lead to public and stakeholder confusion as to the exact boundaries of the areas to be mapped and includes an unnecessary resource and time intensive procedure to produce regulations which are not necessary to fulfil the requirements of the END.

Welsh Ministers identify and list quiet areas in separate Regulation. Given that there are widely differing views locally on what constitutes a quiet area, this approach could be difficult to manage and maintain. This approach may also lead to the local community challenging the designation of certain areas.

Welsh Ministers will not have the appropriate power under the 2006 Regulations to make consolidated maps, if they are considered necessary or possible, to aid the agglomeration action planning process and the identification of quiet areas.

Welsh Ministers would be required to provide guidance for themselves, which in some instances will be unnecessary. The publication of any guidance produced will however fulfil the obligation to inform the public and allow them to contribute at an early stage to the action planning process.

The requirements of the Directive will be met if the proposed amendment regulations are not made, but due to some of the procedures involved and new scientific evidence, will be done so in a more onerous way in terms of time and resource. This could result in some deadlines in the Directive being met late.

Option 2: Make Amendment Legislation

There are a number of benefits to Option 2 and amending the regulations.

Publishing maps identifying the sources that will undergo noise mapping in the future allows better public and stakeholder understanding of the boundaries and extent of the noise mapping that will be undertaken. Providing a visual aid reduces the chances of an incorrect interpretation/understanding of the extent of the areas being mapped. Option 2 also ensures that identifications of the areas to be mapped are made available to the public as quickly as possible and will help to fulfil the requirement of public participation under the Directive.

Allowing quiet areas to be identified as part of the action planning process enables greater local authority and stakeholder participation. Noise is predominantly a local problem and identifying quiet areas locally involving a more inclusive approach gives a greater chance of providing practical local benefit. The designation as part of the action planning process will benefit from greater local knowledge allowing policy to best reflect local priorities.

Although the Welsh Ministers remain the competent authority for producing action plans some local authorities have extensive interest and expertise in noise management and wish to be involved in the production of the action plans. Through this role they will be able to be extensively involved in the identification of quiet areas. The method for identifying quiet areas proposed in Option 2 provides a flexible method which will work well with the variety of approaches to action planning.

Option 2 is also deregulatory as it means that separate sets of regulations identifying noise sources to be mapped in the future and quiet areas do not need to be prepared unnecessarily.

It is apparent, that if produced reliably, consolidated noise maps may be of importance for the action planning process particularly inside agglomerations where more than one noise source is likely to exist at many sites and could also aid with the identification of quiet areas. These maps will further aid in the prioritisation of noise hotspots for further action.

Consolidated maps have the potential to provide a cost-effective solution to visually demonstrate consolidated noise levels within agglomerations, which could contribute to the action planning process.

Amending the 2006 Regulations to remove the duty on Welsh Ministers to publish guidance and replacing this with a power to produce guidance ensures that any action planning guidance produced allows for a variety of approaches to action planning across modes of transport and urban areas and that this guidance can be updated when necessary as the process progresses. This ensures that guidance is only produced when considered both beneficial and necessary. The publication of strategic guidance may also provide a further tool for disseminating information to the public and stakeholders about the action planning process and will allow early engagement in this process through consultation exercises.

c) **Costs**

The costs of the options for implementation are presented below (Annex A).

Option 1: Do nothing option.

This option does comply with the requirements of the END, but due to the unnecessarily onerous nature of some requirements increases the risk of incurring substantial costs due to infraction proceedings against the UK in the European Court of Justice if deadlines are missed.

The identification of sources to be mapped in the form of regulations is likely to cost central government £1k as specialist consultants will need to be contracted to make the identifications on behalf of the WAG.

Option 1 was chosen as the original proposal for the identification of quiet areas as it was expected that a suitable framework could be drawn up to designate quiet areas by Welsh Ministers, however the research by TRL could not find a uniform procedure which could be applied as the designation of quiet areas is frequently a subjective issue. Under Option 1 the designation of quiet areas will be done by WAG, according to certain criteria. Under Option 1, there would need to be a mechanism to challenge the quiet areas selected by the Welsh Ministers both to remove inappropriate areas and introduce additional areas. The drawing up of challenges and responding to these challenges could be time consuming for local authorities and the Welsh Assembly Government. Estimates have suggested that the potential cost of these challenges could be around £1k. It should also be noted that Option 1 is not a good fit with current policy approaches to both local government and land use/transport planning.

As option 1 does not allow for the production of consolidated maps further government funds would need to be spent on researching an appropriate method for considering combinations of noise maps in order to identify quiet areas and noise hotspots within agglomerations. This is estimated to cost £1k.

The cost of producing action planning guidance is estimated at £2k to central government.

Option 2: To undertake the proposed amendment regulations.

Specialist consultants will need to be contracted to make the identifications of areas to be produced on behalf of WAG and produce the maps to be published. This is likely to cost central government £1-1.5k.

Option 1 was chosen as the original proposal for the identification of quiet areas as it was expected that a suitable framework could be drawn up to designate quiet areas by Welsh Ministers, however the research by TRL could not find a uniform procedure which could be applied as the designation of quiet areas is frequently a subjective issue. Therefore, it was decided that

Option 2 would be a better approach, whereby decisions on local quiet areas are made during the preparation of agglomeration action plans where there will be greater local authority involvement.

This policy change will potentially result in a cost saving for central government resulting from the designation of quiet areas being undertaken with more involvement from local authorities and interested stakeholders. There will be an additional cost to local authorities of around £0.5k due to the extra work required to help identify and investigate quiet areas. Under Option 1, there would need to be a mechanism to challenge the quiet areas selected by the Welsh Ministers both to remove inappropriate areas and introduce additional areas. The drawing up of challenges and responding to these challenges could be time consuming for local authorities and the WAG. Estimates have suggested that the potential cost of these challenges could be around £1k. We assume in all options that local authorities will still have to investigate potential quiet areas and decide if they are suitable, this cost is not expected to change under Option 2.

We assume that under Option 2, local authorities will have to investigate potential quiet areas and decide if they are suitable using the filters suggested by the TRL report. However, we assume that Option 2 poses a slight extra cost as they will have a greater role in helping to make the identification themselves.

Under option 2 the WAG will require specialist consultants to draw up any consolidated maps required for the action planning and identification of quiet areas. It is estimated that this will cost approximately £1k.

Under option 2 the WAG may or may not produce guidance after consideration of its necessity and value as a public information tool. Therefore the cost of guidance under option 2 will range between £0 - 2k.

d) Further Questions in the Consultation

The consultation also looked at further amendments to the definitions at the start of the 2006 Regulations. These proposed amendments will not result in a significant cost or saving to central or local government.

e) Competition Assessment

The costs of the proposals fall mainly on the Welsh Assembly Government as the designated competent authority. Other organisations that may be involved with the consultation and formulation of action plans primarily include the transport agencies, local authorities and the Environment Agency. There may be a possible smaller role for those companies operating major industrial plants within the consultation process regarding the formulation of any action plans.

In relation to the proposed amendments to the 2006 Regulations contained within this RIA, it is not expected that there will be any major implications on competition from carrying out the necessary tasks to meet the END's requirements. In terms of the implementation of the action plans, any proposed measure would be subject to consultation, including costs benefit analysis, and full consideration of potential competitive issues would be taken into consideration at this stage.

f) Consultation

A 6 week public consultation on the proposed amendment regs has been carried out in Wales between 29 September and 10 November 2008. A list of the organisations and stakeholders (both internal and external) invited to participate in the consultation can be found in Annex B. Following consultation 6 formal responses were received from a range of organisations. The views of the respondents and additional comment by WAG are shown in Annex C. The costs outlined in the RIA were adjusted following the consultation.

g) Post implementation review

Monitoring whether the requirements of the END have been met will be undertaken by the European Commission as the outputs of the noise mapping and the action planning are submitted to the Commission.

The END will be formally reviewed in 2009 after the first round of noise maps and action plans have been completed. This could result in changes to the approach required to implement the second round of mapping and action planning.

h) Summary

The main costs associated with these amendment regulations will rest with the Welsh Assembly Government and local authorities. A number of amendments are made to the 2006 Regulations, which largely reflect policy advances in the field of environmental noise, while still fulfilling the transposition requirements of the Directive.

This RIA demonstrates that making the amendment Regulations provides the most cost, time and resource efficient solution to the implementation of the END in Wales. It provides a more effective method for the identification of noise sources for future, allowing the public to easily assess the boundary of the area to be mapped. The amendment Regulations provide for a more inclusive approach to the identification of quiet areas by making the identifications as part of the action planning process, where there is greater stakeholder involvement. It allows for the production of consolidated maps which could be a useful tool in the action planning process. It also allows for the production of action planning guidance which could play an important role

in involving the public early on in the proposed approach for noise action planning.

On the basis of the results of this RIA, the Welsh Assembly Government recommends Option 2, making the amendments to the 2006 Regulations.

Annex A

Demonstration of Potential Implementation Costs associated with Options 1 and 2 over the First Round of Action Planning

	Costs Associated with Option 1 (£k)	Costs Associated with Option 2 (£k)
Central Government Costs		
Identification of noise sources	1k	1-1.5k
WAG to identify quiet areas	4k ^a	1k ^b
Challenges to quiet area identifications	1k ^c	
Consolidated maps or alternative approach	2k	1k
Guidance	2k	0-2k
Local Authority (LA) Costs		
Locally identifying quiet areas		0.5k ^d
Challenges to quiet area identifications	1k ^e	
Implementation Cost of Identifying Quiet Areas in the First Round	11k	3.5 - 6k

Notes:

^a Identifications under option 1 would be carried out by a consultant on behalf of WAG. Consultants are likely to require 2 weeks to carry out the work.

^b A cost saving to central government will result from designations being done by LAs. GIS help will be provided by consultants contracted by WAG

^c Under option 1 there will be a method for LAs to challenge the designations of quiet areas that they think are inappropriate. This may be in the form of designated areas being disputed by LAs or areas which LAs feel should be designated as quiet areas but were not designated. Cost incurred assuming 2 out of the 4 LAs challenge some designations. This will also lead to a cost being incurred by the LA itself

We assume LAs chose to challenge 10% of the designated quiet areas and this would lead to 5 challenges being carried out by LAs. We would also assume that there would be 5 challenges as a result of areas which were not designated as quiet areas which LAs felt should be quiet areas.

Responding to a challenge requires an additional days work by an individual at WAG, regardless of the decision reached, at a wage rate of £11.48. This mean that the cost of a decision being challenged to WAG is £86

^d Under option 2 we assume a slightly higher cost to LAs from being more involved in the decision making process, removing the need to query designations. Under option 2, we assume that the time taken for each LA to designate quiet areas is 1 day for one individual. Assuming the wage rate is £12.88, this would present a cost to LAs of £97 per local authority. 2 agglomerations meeting the criteria of END have been identified in the first round of action planning. These agglomerations are made up of 2 LAs. Approx 4 representatives from each LA will be present on the action planning working groups that will identify quiet areas. Under option 2, we assume that there is an additional cost of 20% to draw up the lists and identify the quiet areas.

^e From initial evidence there are a maximum of 50 potential quiet areas in the agglomerations which may meet the filter criteria (This is an initial figure based on only part of the overall TRL criteria). We assume that all these areas would be designated as quiet areas by WAG under option 1. In reality however the number may be lower as further levels of the filter are applied.

We assume LAs chose to challenge 10% of the designated quiet areas and this would lead to 5 challenges being carried out by LAs. We would also assume that there would be 5 challenges as a result of areas which were not designated as quiet areas which LAs felt should be quiet areas.

We assume that building a case to challenge a decision by the LAs requires an additional day of work by an individual, at a cost (wage plus overheads) of £12.88. This means that the cost of challenging a decision to a LA is £97.

Annex B

List of Consultees

Airports

Aberporth West Wales Airport
Airbus UK
Airport Environment Federation
Aerospace Wales Forum
Aviation Environment Federation
BAA plc
Caernarfon Airport
Cardiff International Airport
Haverfordwest Airport
Hawarden Airport
Mona Airport
National Air Traffic Services
Pembrey Airport
RAF Valley
Society of British Aerospace
Swansea Airport
Welshpool Mid Wales Airport

Associations

Airport Operators Association
All Wales Ethnic Minority Association
Association of National Park Authorities
Association of Noise Consultants
British Air Transport Association
British Medical Association
British Tinnitus Association
Chemical Industries Association
Civil Engineering Contractors Association
Country Landowners Association
Electricity Association
Engineering Employers Association
Environmental Noise Barriers Association
Freight Transport Association
House Builders Association
Imported Tyre Manufacturer's Association
Low Frequency Noise Sufferers Association
Motorcycle Industry Association
Natural Gas Vehicle Association
Quarry Products Association
Railway Industry Association
Refined Bitumen Association
Road Haulage Association
Town & Country Planning Association
UK Environmental Law Association

UK Noise Association
Welsh Association of Technical Advisers
Welsh Environmental Services Association
Welsh Local Government Association

Business and Industry

Advisory Committee on Business & Environment
Arena Network QED Centre
British Waterways
Cardiff Chamber of Commerce
CBI Wales
Chester, Ellesmere Port & North Wales Chamber of Commerce
Construction Industry Council
County Surveyors Society
Federation of Small Businesses
Groundwork Wales
Institute of Civil Engineers
Institute of Directors
Mid Wales Partnership
North Wales Economic Forum
Royal Town Planning Institute
South East Wales Economic Forum
South West Wales Economic Forum
Wales Automotive Forum
Wales Co-operative Centre Ltd
Wales TUC
Welsh Electronics Forum

Education

Council for Environmental Education
Institute of Biological Sciences
Institute of Geography and Earth Sciences
Institute of Sound & Vibration Research
Northeast Wales Institute
Open University in Wales
Swansea institute of Higher Education
Trinity College Carmarthen
University of Glamorgan
University of Lampeter
University of Wales Aberystwyth
University of Wales Bangor
University of Wales Institute Cardiff
University of Wales Newport
University Hospital of Wales
University of Wales Swansea
Welsh Institute of Rural Studies

Equality Bodies

Barry Community Enterprise Centre
Commission for Racial Equality Wales

Disabled Persons Transport Advisory Committee
Disability Rights Commission
Equal Opportunities Commission for Wales
Hearing Concern
Hearing Research Trust
Hearing Service Centre
Right to Peace and Quiet Campaign
Royal National Institute for Deaf People
Royal National Institute for the Blind (RNID)
Stonewall Cymru
Wales Council for Voluntary Action
Wales Women's National Coalition
Wales Social Partners Unit Ltd

Health

Chief Executives in Local Health Boards
Chief Executives in NHS Trusts
National Public Health Service Wales
Wales Centre for Health
Health and Safety Executive
British Medical Association
British Tinnitus Association

Local Government

Chief Executives in Local Authorities
Chief Environmental Health officers in Local Authorities
Chief Planning Officers in Local Authorities
National Park Officers in Local Authorities
One Voice Wales

Environment & Noise

Chartered Institute for Environmental Health
Energy and Environment Group
Environment Agency Wales
Environmental Industries Commission
Environmental Protection UK
Institute for Environmental health
Institute for European Environmental Health
National Society for Clean Air (NSCA)
Institute of Acoustics
Natural Environment Research Council
Noise Abatement Society
Royal Commission on Environmental Pollution
Women's Environmental Network

Farming/Rural

Campaign for the Protection of Rural Wales

Country Land & Business Association
Countryside Council for Wales (CCW)
Council for National Parks
Farmers Union of Wales (FUW)
National Farmers Union Cymru (NFU)
National Trust Wales
Royal Society for the Protection of Birds (RSPB)
Urban Forum
Wildlife Trust

Administrations and Government Departments

Countryside Council for Wales
Defra
DOENI
Health and Safety Executive
Scottish Government

Rail & Transport

Arriva Trains Wales
Association of Train Co-ordinating Officers
Association of Train Operating Companies
Automobile Association
Confederation of Passenger Transport
Eurostar Ltd
First Great Western Trains
Green Flag
Institute of Logistics & Transport
Institute of Road Transport Engineers
Network Rail
Office of the Rail Regulator
Passenger Transport Executive Group
Private Wagon Federation
RAC

Rail Passengers Council

Railway Development Society
Railway Forum
Society of Motor Manufacturers & Traders
Strategic Rail Authority
Transport 2000
Virgin Trains
Wales Automotive Forum

And all local authorities within agglomerations

Cardiff and the Vale agglomeration

Cardiff City and County Council
The Vale of Glamorgan County Council

Swansea-Neath Port Talbot agglomeration

Swansea City and County Council
Neath Port Talbot County Borough Council

Annex C

Consultation Responses – Consultation on Amendments to the Environmental Noise (Wales) Regulations 2006

Directive 2002/49/EC relating to the assessment and management of environmental noise is often referred to as the Environmental Noise Directive (END)⁴. The END introduces a new regime of strategic noise mapping and subsequent action planning for major roads, railways, airports and agglomerations in all Member States. The END, adopted by the European Parliament and the Council of the European Union on 25 June 2002, was transposed into law in Wales by the Environmental Noise (Wales) Regulations which came into force on 4 October 2006 (hereafter referred to as the '2006 Regulations'). A number of amendments to the 2006 Regulations have been proposed and undergone a public consultation.

The consultation on the amendment regulations ended on 10/11/08. Six responses were received, which are detailed below along with the Welsh Assembly Government (WAG) comments on specific issues raised.

Responses were received from the following organisations:

- Welsh Association of Chief Police Officers (WACPO)
- Office of Rail Regulation (ORR)
- National Air Traffic Services (NATS)
- Civil Engineers Wales Cymru
- British Waterways
- Environment Agency Wales

Welsh Association of Chief Police Officers (WACPO)

Q1. Do you agree with the proposal to amend the list of definitions?

Yes.

WAG Comments:- Accepted

Q2. Do you agree with the proposal to change the duty of the Welsh Ministers to identify noise sources in regulations to a duty to publish maps identifying the noise sources?

Yes.

WAG Comments:- Accepted

Q3. Do you agree that quiet areas should be identified in agglomeration action plans?

⁴ http://eur-lex.europa.eu/pri/en/oj/dat/2002/l_189/l_18920020718en00120025.pdf

Yes.

While I recognise that the Directive makes no specific requirements for the protection of quiet areas in open country it is my understanding that the Assembly could do so if it wishes – the Directive does not require nor prevent this. We have a significant and growing traffic-related noise problem in our National Parks, Areas of Outstanding Natural Beauty and other valuable landscapes. The END does require the Assembly to consider road-related noise, and I would urge the Assembly to consider using the Regulations to manage road generated noise in our most sensitive and valued landscapes. To a significant extent the Welsh economy depends upon the tourist economy [see ‘*Wildlife Economy Wales*’ (Environment Agency & WAG, 2007), and ‘*Valuing our Environment*’, (CCW & WAG, 2006)] - the feeling that Wales is a good place in which to spend a short break using money earned elsewhere in the UK. To a significant extent the visitor experience depends upon rural Wales being perceived as better than and/or different to England – and traffic noise has a large part to play in this. The Assembly could if it wished use these Regulations to pursue its own economic and tourist strategy rather than seeing them as an imposition from Europe.

WAG Comments:- Presently, the identification of quiet areas is only required in agglomerations identified under the 2006 Regulations which transpose the requirements of the END in relation to Wales. The Regulations require that measures taken within the action planning should apply in particular to the most important areas established by the strategic noise mapping. Only those areas that meet the criteria set out in END for strategic noise mapping in round one have been mapped to date e.g. roads with 6 million vehicle passes a year and railways with 60,000 train movements per year. Areas outside these areas, which do not meet the criteria, have not been mapped at the present time. The Welsh Ministers as competent authority are required to ensure the correct transposition of the Directive in Wales as it is therefore prudent to firstly ensure that absolute requirements of the directive are met as a priority.

The Directive does not provide any further clarification of quiet area criteria or seek to provide a definition. As our understanding of such concepts increase, areas in open countryside may be considered in further mapping and action planning rounds.

Q4. Do you agree with the proposal to provide Welsh Ministers with the power to make consolidated noise maps when considered necessary?

Yes.

WAG Comments:- Accepted

Q5. Do you agree with the proposal to change the duty of the Welsh Ministers to publish guidance to a power to publish guidance?

Yes.

WAG Comments:- Accepted

Q6. Are there any other comments relating to the proposed amendments that you would like to make?

Annex A Explanatory note – action plans Reg. 21 states “Requires Public Authorities to treat action plans as policy insofar as the action plan identifies them as being responsible for a particular action. Public authorities may depart from such policies in specified circumstances”.

Specified circumstances are not defined, but need to be.

WAG Comments:- The specified circumstances can be found in the body of the Regulations.

Q7. We would welcome comments on the draft RIA.

The RIA is clear and helpful, and supports the change in approach to the recommended Option 2, which I support. However, the opportunity costs involved will be more than insignificant – paragraphs 48-54 are not a realistic assessment of the costs. This (as usual) undermines the credibility of the exercise.

WAG Comments:- The costs outlined in paragraphs 48-54 are for the administrative mechanism required to be put in place to incorporate the suggested changes. WAG has reappraised the costs in light of the response and believes that the figure set out within the RIA represents an accurate cost.

Office of Rail Regulation (ORR)

We are generally content with the proposals. However, in relation to the fifth amendment, in term of ensuring a level of transparency of the criteria and limit values that are to be used in developing action plans we consider that it would be preferable if the requirement to publish specific guidance remained. The regulations for England and Scotland require such guidance to be produced where SofS and Scottish Ministers are also designated as the respective Competent Authority, and the current regulations are therefore consistent with this approach.

WAG Comments:- *The Welsh Ministers are the competent authority in relation to the implementation of END in Wales and are therefore responsible for the issuing of related guidance in Wales. The fifth amendment does not preclude the Welsh Ministers from publishing guidance but rather allows them to publish guidance when it is deemed most appropriate in the light of new information and further evidence rather than to a prescribed timeframe, as is currently the case. The Welsh Ministers consider that it is more appropriate to provide for the flexibility to produce guidance at the most appropriate times; thereby ensuring that new information and understanding of noise issues may be incorporated as necessary. The 2006 Regulations designate the Welsh Ministers as the competent authority for both the noise mapping and action planning (except for airports where airport operators are the competent authority). As the Welsh Ministers have chosen not to delegate this role, the effect of the requirement is that the Welsh Ministers are currently required to publish action planning guidance for themselves. This requirement is therefore considered an unnecessary administrative burden. The Welsh Ministers do however recognise that the issue of such guidance may also provide a tool for disseminating information to the public and stakeholders about noise action planning, therefore, the Welsh Minister's wish to retain the power to issue such guidance, at appropriate times, for this purpose.*

National Air Traffic Services (NATS)

Q1. Do you agree with the proposal to amend the list of definitions?

NATS agrees entirely with the proposal to amend the list of definitions as proposed.

WAG Comments:- *Accepted*

Q2. Do you agree with the proposal to change the duty of the Welsh Ministers to identify noise sources in regulations to a duty to publish maps identifying the noise sources?

The following response is provided on the basis that the requirement is to identify sources of noise, rather than its effects; (i.e. that the point, or linear source of noise is identified,) NOT any resulting modelled noise contour that might surround that source. As part of the obligations placed on NATS as an air navigation service provider by license under the Transport Act 2000, NATS is required to make available the core services (as specified in the license) to service any reasonable level of overall demand. In order to achieve this requirement from time to time NATS is required to make changes to the airspace within which it operates a process with which it complies through adherence to the CAA's CAP 725 Airspace Change Process Guidance (Reference 1). Within this document (Reference 1) there is a stated requirement from the Department for Transport for the CAA to pursue policies that will help preserve the tranquillity where this does not increase significantly

the environmental burdens on congested areas. Guidance provided to the CAA by the Department for Transport (Reference 2) states that:-

Government policy will continue to focus on minimising over-flight of more densely populated areas below 7000ft. However, where it is possible to avoid over-flight of National Parks and AONBs below this altitude without adding to environmental burdens on more densely populated areas, it clearly makes sense to do so.

A method suggested in the guidance provided to the CAA by the Department for Transport (Reference 2) to assist in reaching a view on any proposed change is to quantify in terms of a population count the expected noise effect of a proposed change.

At present there is no accepted definition of either tranquillity or what constitutes a “quiet area.” It is considered likely that through time, the requirement to make changes to the airspace arrangements used in the UK in order to continue to provide the services for which NATS is licensed will continue. Airspace changes proposed recently have been subject to considerable scrutiny by a wide range of stakeholders, through the consultation exercises completed as a part of the consultation process. The feedback received as a result of this consultation has highlighted two major issues:

- i) That opinions on the effect of aircraft operations on the noise environment (as expressed through responses to consultation) vary geographically.
- ii) That there would be benefit through a clarification of requirements in the specific identification of areas valued for their tranquillity (as defined as “a state of calm or quietude”).

Therefore any means for the identification of areas valued for their tranquil qualities would greatly assist in enabling the better planning of airspace developments required under NATS license and, in meeting expectations through consultation on airspace developments.

WAG Comments:- The END requires that no later than the 31 December 2008 (and every 5 years thereafter) Member States shall inform the Commission of all the major agglomerations, roads and railways in their territories i.e. sources of environmental noise, that meet specific criteria set out in the Directive. Rather than listing those sources in regulations it is proposed that an amendment is made to 2006 Regulations which allows the noise sources to be identified in the form of published maps showing the locations of the agglomerations, roads, railways and airports identified for subsequent noise mapping. This amendment is not associated with the identification of quiet areas but a specific reporting requirement for the EC. The Directive is not prescriptive as to whether sources should be identified in maps or regulations.

The proposed amendment is deregulatory and will be more cost effective in terms of both time and resources. It will allow the public and stakeholders to more easily assess the boundaries of the areas that have been identified for future noise mapping.

The Welsh Assembly government will be working with the European Commission, the UK government and the other Devolved Administrations to gain a better understanding of quiet areas.

Q3. Do you agree that quiet areas should be identified in agglomeration action plans?

The agglomeration action planning process required by the Environmental Noise Directive is intentionally both a local and involved process. This, in the absence of any accepted definition of what constitutes a “quiet” area or area valued for its “tranquillity of quietude” from an airspace planning perspective is problematic in that there is likely to be variation in the scale, number and relative value to be placed on the quiet areas identified. While NATS understands the need to be responsive to local conditions and opinions, it is felt that unrestricted local stakeholder involvement in the identification of quiet areas, has the potential to result in identification of quiet areas and the subsequent use of these quiet areas through planning mechanisms as a means by which any developments with potential noise implications might be blocked. The potential environmental benefits to be gained from the identification of “quiet” areas in terms of planning and consultee expectation management could be lost as a result of the effects of different definitions used to determine quiet areas as it is not likely to be practical to minimise the effects of air traffic management on all areas identified given the additional constraints imposed in the airspace design process.

There has been suggestion made by, for example DEFRA that a numeric (e.g. modelled dB) definition of a quiet area be adopted. Such an option, if adopted is likely to lead to the classification of large less densely populated areas as quiet and therefore made subject to protection. This has the potential to add to the noise burden, perhaps unacceptably, felt by populated areas. Adoption of the proposed amendments to the Environmental Noise Directive has the potential to override the noise policy laid out in the CAA’s CAP 725 (Reference 1) and therefore requires careful consideration.

The most acceptable interpretation of the requirements of the END would be to avoid overflight of population below 7000ft and avoid overflight of AONBs and National Parks where possible to do so, taken together with the requirement to also avoid increasing the noise burden wherever possible felt in quiet areas, identified through a common definition. Adoption of this approach would ensure consistency with Guidance to the CAA on the environmental analysis as required by the Airspace Change Process. It is considered essential by NATS that any The detail of this requirement could be determined on a case by case basis in co-ordination with requirements identified by the airspace change regulator (the CAA) and any locally identified competent authority such as a Local or County Governing Body.

WAG Comments:- We agree that a universal limit value to identify quiet areas would not be appropriate, hence the need for a more localised and inclusive approach.

The END requires quiet areas in agglomerations to be identified by the competent authority (in Wales the competent authority for END are the Welsh Ministers), but the Directive does not set out specific criteria that should be used to identify quiet areas and Member States are free to designate quiet areas at their discretion. It is widely accepted that action planning is a local and involved process and Welsh Ministers are keen to work with local partners including Local Authorities to ensure that local knowledge and understanding of the issues are fully represented within the action planning process.

Guidance on the identification of quiet areas will be provided via the action planning framework set out in The Environmental Noise Action Planning (Wales) Guidance – Agglomerations, Roads and Railways. This guidance sets out a framework of a series of working groups overseen by a core steering group. The Local Authorities will aid the identification of quiet areas through their membership of the Agglomeration Working Groups, with appropriate guidance and support from the Assembly Government. The Welsh Ministers, as competent authority, will retain overarching management of the process. Identifying quiet areas as part of the action planning framework will allow all stakeholders involved in Environmental Noise in Wales to have an input into the identification and the issues surrounding quiet areas.

Q4. Do you agree with the proposal to provide Welsh Ministers with the power to make consolidated noise maps when considered necessary?

NATS is generally supportive of the concept of production of agglomerated maps however to aid a consistent approach to airspace planning and management it would be preferable if a consistent approach to the production of agglomerated maps were adopted i.e. either produce these universally or do not produce them at all. It would be ideal if any definition adopted of quiet areas were complementary to the results of the production of agglomerated noise maps.

WAG Comments:- Assuming the agglomerated maps refer to consolidated maps we accept that it would be desirable to have a universal method. Research is currently underway considering this. Until such research/techniques are available single source maps will continue to be used. Single source maps will continue to be produced and published even if consolidated maps are made as they are required under END and provide a valuable tool for assessing the contribution to overall noise from an individual source. If produced reliably, consolidated noise maps may be of importance for the action planning process, particularly inside agglomerations where more than one noise source is likely to exist at many sites, and could also aid with the identification of quiet areas. It is therefore important that the WAG has the power to produce consolidated maps in the future if considered necessary.

Q5. Do you agree with the proposal to change the duty of the Welsh Ministers to publish guidance to a power to publish guidance?

Any action taken in regard to this aspect of the amendment should not serve to reduce or alter the desired effect of application of the requirements of the Directive. If, for example provisions were included that dealt with the subject of quiet hours then it is not felt to be an appropriate means for the specification or enforcement of such a requirement. In common with responses made elsewhere to this consultation it would be preferable if a consistent approach were to be taken to the issue of guidance. It is accepted however that the application of guidance may vary from one location to another, consistent with local conditions.

WAG Comments:- The amendment will allow guidance to be produced at the most appropriate times when all the relevant information for the production of accurate guidance is held by WAG. This will not prohibit any actions associated with the implementation of the Directive.

Q6. Are there any other comments relating to the proposed amendments that you would like to make?

Any amendment proposed to the Environmental Noise Directive as transposed must be made in a manner that recognises and is consistent with any other applicable requirements and guidance, for example requirements placed by the Department for Transport. While the importance of stakeholder engagement and influence on proposed amendments is recognised, such amendments should not be phrased such as to provide scope for their use in resistance to developments. NATS would like to express the need for recognition in the amendments of the existing regulatory guidance and would support an approach that showed consistency with such guidance. For example it is considered desirable if modelled noise profiles for each of the L_{DEN} periods i.e. Day, Evening and Night, could be calculated separately to allow for comparison against modelled outputs from other sources e.g. modelled L_{eq} contours.

A mechanism by which National stakeholders such as NATS could be notified of consultations on action plans to allow sufficient time for the formulation of appropriate responses would also be a key requirement to ensure adequate consideration is made.

WAG Comments:- Once suitable quiet areas have been identified they must be preserved as is required under the Directive. This preservation may include preventing further developments which may considerably worsen the noise climate in the quiet area.

There are no proposals to change the existing framework for the management of noise. Existing guidance will be considered in any additional guidance documents produced by WAG.

Noise indicators other than L_{den} are available and allowed under the Directive.

NATS are listed on the environmental noise consultee list and will be notified of forthcoming action plan consultations.

Q7. We would welcome comments on the draft RIA.

NATS as a body does not hold any regulatory powers; however it would be beneficial if all of the points made above were considered in the scope of the regulatory impact assessment, particularly the need for clarity of definitions of terms and consistency with other sources of regulation and guidance, to ensure that forward planning is possible.

WAG Comments:- Accepted

Civil Engineers Wales Cymru

Q1. Do you agree with the proposal to amend the list of definitions?

Yes.

WAG Comments:- Accepted

Q2. Do you agree with the proposal to change the duty of the Welsh Ministers to identify noise sources in regulations to a duty to publish maps identifying the noise sources?

Yes.

WAG Comments:- Accepted

Q3. Do you agree that quiet areas should be identified in agglomeration action plans?

Yes.

WAG Comments:- Accepted

Q4. Do you agree with the proposal to provide Welsh Ministers with the power to make consolidated noise maps when considered necessary?

Yes

WAG Comments:- Accepted

Q5. Do you agree with the proposal to change the duty of the Welsh Ministers to publish guidance to a power to publish guidance?

No

WAG Comments:- As no explanation is given by the respondent we would like to re-emphasise that the END allows Member States to designate the appropriate competent authority for noise mapping and action planning. The 2006 Regulations designate the Welsh Ministers as the competent authority for both the noise mapping and action planning (except for airports where airport operators are the competent authority) and the Welsh Ministers have chosen not to delegate this role. Therefore the Welsh Ministers are currently required to publish action planning guidance for themselves under the 2006 Regulations.

The proposed amendment is to make this a power to publish guidance rather than a duty. It then allows for a variety of approaches to action planning across modes of transport and urban areas and any guidance produced can be updated as necessary as the process progresses. It is not seen as necessary to remove the need to produce action planning guidance completely as the publication of strategic guidance may also provide a further tool for disseminating information to the public and stakeholders about the action planning process and will allow early engagement in this process through consultation exercises. This amendment will not preclude guidance from being issued just that WAG will issue and update guidance when it is deemed most appropriate.

Q6. Are there any other comments relating to the proposed amendments that you would like to make?

I would wish you to consider the problem of areas within planning designated commercial areas where a certain amount of noise would be generated yet very often in these areas there are residents who suffer considerably

WAG Comments:- Such issues will be considered as part of the noise action planning process required by END and the Environmental Noise (Wales) 2006 Regulations. However only sources of noise specified by END will be considered under this regime that meet the specified criteria for identification i.e. noise from roads, rail aircraft and industry within agglomerations. Noise from the commercial premises themselves will be dealt with under the existing statutory nuisance regimes.

Q7. We would welcome comments on the draft RIA.

No comment

WAG Comments:- Accepted

British Waterways

We have no objection to the proposals, and the revisions to publish maps instead of lists in Regulations seems particularly sensible and practical.

[WAG Comments:- Accepted](#)

Environment Agency Wales

The Environment Agency Wales does not have any comments on the proposal.

[WAG Comments:- Accepted](#)

Conclusions

Following consideration all the responses received to the consultation no major changes were made to the amendment regulations. The amendment regulations will therefore be made and laid before the National Assembly for Wales.