

EXPLANATORY MEMORANDUM TO
THE CONTROL OF NOISE (CODE OF PRACTICE FOR CONSTRUCTION AND
OPEN SITES) (ENGLAND) ORDER 2015

2015 No. 227

- 1.** 1.1 This explanatory memorandum has been prepared by the Department for the Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
- 2. Purpose of the instrument**

2.1 The instrument revokes and replaces the Control of Noise (Codes of Practice for Construction and Open Sites) (England) Order 2002.
- 3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]**

3.1 None
- 4. Legislative Context**

4.1 Under section 71(2) Control of Pollution Act 1974 (CoPA) the Secretary of State is required to approve a code of practice by order which he/she considers suitable for the purposes of providing guidance on appropriate methods for minimising noise on construction sites. The Secretary of State may also approve other codes of practice providing guidance on minimising noise from other kinds of sites. Under the Act “noise” includes “vibration”.

4.2 The Secretary of State currently approves by order four codes of practice relating to noise and vibration from construction works. These make up British Standard (BS5228). BS5228 was last approved by Order in 2002 however two new and improved versions have been issued since then, in 2009 and 2014. BS5228 has been streamlined into two parts of a single Code, one part relating to noise and one part relating to vibration. The Control of Noise (Code of Practice for Construction and Open Sites) (England) Order 2015 revokes and replaces the 2002 order, and approves the latest version of BS5228.

4.3 BS5228 recommends procedures for noise and vibration control in respect of construction operations. It assists developers, local authority environmental health officers, contractors and site operatives, amongst others, with noise control of construction works in line with noise management legislation.

4.4 Section 60 of the CoPA 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 that the application contains sufficient information and that 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.

4.5 When using its powers under section 60 CoPA, a local authority must have regard to relevant provisions of any code of practice approved by the Secretary of State and issued for the purpose of giving guidance on appropriate methods for minimising noise. This means that local authorities must have regard to the approved Code (BS5228) when imposing requirements on works of construction or demolition under section 60 CoPA. Similarly, contractors will refer to BS5228 when drawing up their own noise management plans under a Section 61 application. Approving the latest code gives those working in the construction industry more certainty regarding whether the requirements placed upon them by a section 60 notice are reasonable since it will be clear that the appropriate reference point is the latest and most up to date version of BS5228. This would inform whether they would have grounds to appeal that notice.

4.6 Local authorities also have a duty to serve a noise abatement notice to stop noise – including noise from construction - emitted from premises that is prejudicial to health or a nuisance under section 79 of the Environmental Protection Act 1990 (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 BS5228 gives the construction industry more certainty that by following the most up to date standard they will be less likely to be found guilty of causing a statutory noise nuisance.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales but applies in England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Standards are an agreed way of doing something that are market-led and subject to independent British Standard Institute processes. They capture current good practice by involving all relevant stakeholders. The Code of Practice on Construction Noise has always been BS5228 which has been subject to regular review and revision. The 2002

Order currently approves BS5228 as it was in 1997. However it has been updated and reissued twice since then, in 2009 and 2014. Following publication of the 2009 version, the approved BS5228 was reviewed as part of ‘business as usual’ policy work to see if it remained fit for purpose as best practice guidance to the construction industry.

7.2 As part of this review it became clear that further improvements were planned and that a new version would be published soon after. In April 2011, the Government launched the Red Tape Challenge, an initiative to review all potentially unnecessary regulation on business over this Parliamentary Term. The 2002 Order approving various parts of the 1997 BS5228 was identified as a potential area for change as part of this process.

7.3 BS5228 aims to assist those working in the construction industry and local authorities by recommending methods of reducing noise and vibration from construction works. Under the EPA and the CoPA local authorities have powers to reduce or stop noise and vibration from construction works. However they must have regard to BS5228 when exercising these powers. Therefore approving the latest version of BS5228 will give the construction industry more certainty that by following the most up-to-date BS5228 they will be less likely to be penalised under noise management legislation.

8. Consultation outcome

8.1 British Standards are developed on the basis of consensus of all interested parties and subject to unrestricted open consultation to ensure continuing validity. Representatives of organisations with an interest and expertise in the subject matter are brought together by BSI (British Standard Institute) to form a technical committee to draw up standards, with BSI staff facilitating its development and review. BS5228 has been subject to independent BSI processes. This has included industry representation on the technical committee which undertook public consultations for both the 2009 and 2014 revisions of BS5228 spanning 1st May - 30th June 2008 and 1st July and 31st August 2013. The chairman of the technical committee has informed us that all comments for the 2009 revision were taken into account, with no comments being made on the subsequent 2014 version.

8.2 We also contracted a specialist noise consultancy firm to highlight the key revisions that had been made to BS5228 since 1997 in order to understand any potential impact of adopting the latest version. They confirmed that there would be little to no impact and that the construction industry was already using the latest version of BS5228. This is supported by the fact that the latest versions of BS5228 have been the reference documents in the development of major construction projects such as High Speed 2. This confirmed our decision to adopt BS5228 2014.

9. Guidance

9.1 The approved version of BS5228 is available to purchase from the BSI shop website or can be obtained in person or by post from the Customer Services Sales Department at the British Standards Institution, BSI, 389 Chiswick High Road, London,

W4 4AL; telephone 020 8996 9001. It may also be accessed for free in most local libraries.

10. Impact

10.1 The impact on business is positive. BS5228 has been revised and improved twice since the last approved version in 2002. Evidence has shown that the construction industry is already using BS5228 2014. Approving this latest version of the standard will give more certainty to business and regulators, who regularly use it to manage noise and vibration impacts from construction.

10.2 Even taking a conservative approach, and assuming some businesses would not be following the 2014 version of BS5228, we anticipate there to be a low total cost to business across England. This is because the majority of changes between 2009 and 2014 versions of BS5228 are minor. This is also true for the public sector.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business. However, the impact of adopting the latest version of BS5228 is positive overall.

12. Monitoring & review

12.1 The Department will continue to monitor and review the impact of approving BS5228 2014 as part of its standard 'business as usual' policy-making.

13. Contact

13.1 Anna Hunt at the Department for Environment, Food and Rural Affairs Tel: 0207 358 5617 or email: anna.hunt@defra.gsi.gov.uk can answer any queries regarding the instrument.