

Scottish Executive Environment and Rural Affairs Department

**GUIDANCE ON DRAFTING CODES OF PRACTICE FOR
MINIMISING NOISE IN SCOTLAND**

Produced by the Air Quality Team, Environment Group

March 2002

Scottish Executive Environment and Rural Affairs Department

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ABOUT THIS GUIDANCE

Background

Under section 71 of the Control of Pollution Act 1974 the Scottish Ministers have powers to issue and approve codes of practice for minimising noise. Codes of Practice can be prepared by the Scottish Executive or non-government bodies. Codes currently approved are listed at Appendix A.

The purpose of this guidance

To ensure that all codes of practice on noise are fairly considered, the Executive has prepared this guidance to assist authors who wish to design codes. The guidance sets out our proposals for the recommended procedures that should be followed if the resulting code is to be submitted for approval and command the confidence of the courts and others who may apply it.

This guidance relates only to Scotland.

GUIDANCE ON DRAFTING CODES OF PRACTICE FOR MINIMISING NOISE IN SCOTLAND

INTRODUCTION

1. Codes of Practice (Codes) are now widely employed in many areas of environmental policy. Codes concerned with minimising noise are intended to provide guidance for both those whose activities cause noise and those who have responsibility for its regulation.

2. Codes approved by the Scottish Ministers have statutory recognition, but they do not have the force of regulation, and infringement does not constitute an offence. However, non-compliance will usually be taken into account in any enforcement proceedings concerning noise nuisance, and it is therefore important that they are prepared in a manner which renders them fit for this purpose.

3. Codes should be submitted for approval under Section 71 of the Control of Pollution Act 1974. The following arrangements apply in the UK:

- codes to cover Scotland only should be submitted to the Scottish Ministers;
- codes to cover England only should be submitted to the Secretary of State at DEFRA;
- codes to cover Wales only should be submitted to Ministers at the Welsh Assembly;
- codes to cover Northern Ireland only should be submitted to the Department of the Environment for Northern Ireland;
- codes to cover the whole of the UK should be submitted to each of the above.

4. This document provides guidance for those preparing or otherwise contributing to codes for submission to the Scottish Ministers. It sets out considerations which should be taken into account. It also recommends the procedures which should be followed if the resulting code is to be submitted for approval and command the confidence of the Courts and others applying or interpreting it. The processes recommended are designed so that codes produced under Section 71:

- assist in minimising noise disturbance;
- are prepared in such a way that provides confidence in them as a reasonable indication of current best practice;
- are practical, reasonable and appropriate to the circumstances; and
- demonstrate that all relevant interests have been taken into account.

PROCESS

Assess the Need for a Code

5. The first step in the production of a Code on Noise is to define the issue concerned and establish the extent to which it is already covered by an existing Code, or whether there is a more appropriate control regime within existing legislation. It may be useful at this stage to contact the Scottish Executive Air Quality Team to discuss your intention to produce a Code. They will be able to advise you if a proposed code on a particular activity is eligible for consideration as a Code of Practice. The Air Quality Team can also advise on existing approved Codes and information on codes being developed. If another body is already undertaking work in this area, they will be able to put you in touch with it. If you intend to produce a code to apply throughout the UK, the Air Quality Team will liaise with colleagues in DEFRA, the National Assembly for Wales and the Department of the Environment for Northern Ireland to consider the best way forward.

6. In parallel with this, there must be an assessment of whether a Code is the best means to deal with this noise source. The following criteria should be met for all proposed Codes.

The issue should:

- be clearly defined and concern a distinct activity, operation or circumstance. For example, “clay pigeon shooting” is a distinct activity and therefore could merit a Code whereas “field sports” is probably too general a description;
- have a wide geographical range, preferably national, rather than being confined to one particular area or region;
- have generated a demonstrable level of concern amongst the general public, regulatory authorities, consultees, or industry. While there is no minimum number of complaints needed to warrant a Code, concern should go beyond a small number of vociferous complainants about a specific activity; and
- be one which is likely to recur on a regular basis.

7. This should mean that the Code helps those involved understand and take a reasonably consistent approach to similar problems, while retaining the flexibility necessary to deal with local problems.

Form a Working Party

8. The working party will be responsible for drafting the Code and developing the control mechanisms which will be central to it. While its members may not be directly involved in the research work, they will decide the extent to which the results or findings of the work are incorporated into the final Code.

9. Membership of the working party should be balanced. Any relevant trade bodies should be included and members should have some technical knowledge of the problem and be mandated to speak for their organisation. Failure of a key relevant group to participate in a working party should not necessarily be a bar to other

interested parties drawing up a Code although any key stakeholder's non-participation should be clearly stated in a separate appendix to the code with any relevant reasons.

10. When approving a Code the Scottish Ministers have to be sure that the working party has considered the interests of relevant parties during its development. All reasonable efforts should be made to allow all stakeholders the opportunity to express their views and propose amendments to the draft Code.

11. However, care must also be taken not to make the working party cumbersome or overly bureaucratic. It may be that a core group is formed, whose membership adheres to the principles of balance and representation, with a wider group which is kept informed of developments at regular intervals. The most appropriate format will ultimately be governed by the issues concerned and the number of organisations or individuals involved. It is probable that a membership of between four and ten individuals will provide the best working arrangement.

Assess the Information Requirement

12. One of the first tasks for the working party, once the problem has been sufficiently defined, is to determine the extent of knowledge which exists concerning the problem. All decisions on optimum control techniques or effective solutions should be as informed as possible and therefore the working party needs to be in possession of the full range of information available on the subject. Much of this information is likely to be held by members of the working party, but some may not and so a process for obtaining and evaluating this external information should be developed.

13. If, following this process, there is insufficient information to develop the Code fully, the working party has three options:

- conduct the necessary research. Issues such as scope, timescales and funding should be addressed if this option is pursued;
- continue to produce the Code but highlight clearly where gaps in knowledge limit the full development of the Code; or
- postpone or abandon the Code.

Formulate the Control Method

14. The Control of Pollution Act 1974 states that the Codes of Practice approved under section 71 are “*for the purposes of giving guidance on appropriate methods....for minimising noise*”. The control method is therefore the central part of the Code and its development will form the bulk of the working party’s task. The precise nature of the control method proposed will depend on the problem it is intended to alleviate, nevertheless the following principles should be followed. The Code should:

- represent as far as possible best practice for minimising the noise in question;
- provide the general principles for noise control for the events, premises or circumstances it is intended to cover;
- be practical in nature and provide a clear implementation mechanism;

- include the process for developing a noise control programme for each individual event, premises or circumstance and show how it can be related to other environmental issues relevant to the situation; and
- define the ideal conditions within which noise problems will not occur. If this is not feasible, an alternative may be to devise a set of criteria against which a judgement can be made about whether a noise problem is likely to occur.

15. It should be remembered that the Code will form national guidance. Therefore the control method needs to be proven and the technical detail must be of the highest quality.

Draft the Code

16. The Code, if approved by the Scottish Ministers, may be used by people with a wide range of backgrounds and expertise and it must therefore be an accessible document. The working party should take into account the costs and impacts of the code, both on those stakeholders directly involved, and also on the wider public.

The exact format of the Code and the mechanisms for drafting it will vary according to the agreed working arrangements of the group. However, the Code should adhere to the following principles:

- it should be clear, with any lengthy technical information, where it is deemed necessary, included in appendices. Jargon should be avoided;
- while justification of a particular point or position is important, lengthy argument should be avoided;
- it should not include lengthy explanations of either the legal or planning process but rather focus on the practical nature of noise control, although some explanation of the legal status of Codes of Practice should be included;
- it should comply with all relevant national legislation;
- it should provide a cross reference to other Codes, and existing guidance and legislation, concerning the minimisation of noise;
- any research results included in the Code should be fully referenced; and
- the Code should include a reference to the date at which it was drafted and that it therefore represents the best practice known at the time.
- be available, ideally, in a number of formats e.g. in paper and internet versions
- be subject, ideally, to review every five or ten years

17. The ability of the Code to achieve its objective of minimising noise from a given activity will depend on both the quality of the guidance within the Code and how it is presented. Careless drafting could lead to ambiguous or unintended interpretation. The working party might find it useful to consider seeking legal advice while drafting the code.

Consult on the Draft Code

18. When the working party is agreed on its draft text, it should be distributed for consultation, the list of consultees being as inclusive as possible. The Scottish Executive Air Quality Team can advise on appropriate distribution lists.

19. The consultation process should allow enough time for the consultees to consider the Code fully and formulate a response. It is recommended that the minimum time allowed for consultation responses is 12 weeks, although this may be extended.

20. The Scottish Executive is currently developing an external version of its own Good Practice Guidance on Consultation which will be widely available in due course. In the meantime, the Cabinet Office in London has issued Consultation Criteria that reflect the same principles of broadening the reach and effectiveness of consultation as the Scottish Guidance. Please refer to these criteria (attached at appendix B).

21. In addition to agreeing a list of consultees, the working party should agree a mechanism for considering and analysing the responses and, where necessary, amending the Code. Depending on the nature and scale of the problem which the Code addresses, the responses may be numerous and detailed and therefore time should be allowed to consider all of these in full. Documentary evidence of the consultation exercise carried out will be required when the Code is submitted for approval.

Submit Draft to the Scottish Ministers

22. Following final consultation and amendment, the proposed Code should be submitted to the Scottish Ministers for consideration, along with supporting documentation. These supporting documents should include written evidence showing that the procedure set out in this guidance has been followed. The Scottish Ministers may request officials to carry out further consultation with other Government Departments, technical advisors, lawyers and other interested parties. This scrutiny will attempt to verify that the Code:

- will assist in minimising noise;
- is an indicator of best practice of noise control for the Courts;
- has taken account of advice and criteria in other Codes and guidance;
- has taken account of technical research;
- has identified the baseline position and that its implementation will not detract from that position;
- is balanced in the detailed guidance it provides; and
- has appraised, where appropriate, the relevant costs, benefits and other impacts of the proposals.

23. As a result of the above, the Scottish Ministers may return the Code to its authors with detailed comments and suggestions for further work or consultation. It should be noted that the approval of any Code under section 71 of the Control of Pollution Act 1974 is at the discretion of the Scottish Ministers. Ministers are not obliged to

approve codes submitted to them. Draft Codes which are not accepted, for whatever reason, might nevertheless still find legitimate use as good practice within the trade.

24. The postal address to which draft Codes should be sent is:

Scottish Executive Environment and Rural Affairs Department
Environment Group
Air, Climate and Engineering Unit
Air Quality Team
1-H North
Victoria Quay
EH6 6QQ

Fax: 0131 244 0404

E mail: air.quality@scotland.gov.uk

APPENDIX A

APPROVED CODES OF PRACTICE

Code of Practice on noise from audible intruder alarms 1982 , DOE, Scottish Development Department, Welsh Office, Department of the Environment for Northern Ireland ISBN 0-11-751590-6

Code of Practice on noise from model aircraft 1982 , DOE, Scottish Development Department, Welsh Office, Department of the Environment for Northern Ireland ISBN 0-11-751592-2

Code of Practice on noise from ice cream van chimes 1982 , DOE , Scottish Development Department, Welsh Office, Department of the Environment for Northern Ireland 1 ISBN 0-11-751591-4

BS5228 Noise and Vibration Control on Construction and Open Sites, British Standards Institute. Parts 1, 3, 4 and 5 were approved as Codes of Practice by Scottish Ministers in March 2002. Copies available from BSI (389 Chiswick High Road, London W4 4AL).

THE CONSULTATION CRITERIA

To be reproduced in consultation documents

The criteria in this code apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other methods of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. European Community law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

The criteria should be reproduced in consultation documents, with an explanation of any departure, and confirmation that they have otherwise been followed.

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken.