EXPLANATORY MEMORANDUM TO

THE CONTROL OF NOISE (CODE OF PRACTICE ON NOISE FROM ICE-CREAM VAN CHIMES ETC.) (ENGLAND) ORDER 2013

2013 No. 2036

1. This explanatory memorandum has been prepared by the Department for 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 (Code of Practice on Noise from Ice-Cream Van Chimes Etc.) Order 1981.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Section 62(3) of the Control of Pollution Act 1974 allows the operation of loudspeakers (i.e. chimes) advertising ice-cream and other perishable commodities between 12noon and 7pm, provided they do not cause annoyance to those in the vicinity. The Code of Practice on Noise from Ice-Cream Van Chimes Etc. 1982 (the Code) was developed to give guidance on methods of minimising annoyance caused by the operation of such chimes. It includes guidance on the frequency, duration and volume of chiming. While it does not in itself create offences or have the force of law, regard must be had to it by local authorities and magistrates' courts in the exercise of their powers and functions under the Control of Pollution Act 1974.

4.2 In addition, section 79(1)(ga) of the Environmental Protection Act 1990 provides that noise that is prejudicial to health or a nuisance that is emitted from or caused by a vehicle, machinery or equipment in the street is a statutory nuisance. Under section 80(7) of the Environmental Protection Act 1990, businesses have a defence against nuisance action if they are able to prove that the 'best practicable means' were used to prevent, or to counteract the effects of, the nuisance. This means that they did all they could to avoid causing annoyance. Section 79(9) provides that regard must be had to a code of practice issued under section 71 of the Control of Pollution 1974 when interpreting 'best practical means'.

4.3 The Control of Noise (Code of Practice on Noise from Ice-Cream Van Chimes Etc.) (England) Order 2013 approves a new version of the Code. The Code has been revised following public consultation and the involvement of the mobile vendor industry, to make it less restrictive for mobile vendors, as part of the Hospitality theme of the Red

Tape Challenge. The amendments extend the permitted length and frequency of chiming: vendors can chime for up to 12 seconds instead of 4 seconds, and every 2 minutes rather than every 3 minutes.

5. Territorial Extent and Application

5.1 This instrument applies to 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 In April 2011, the Government launched the Red Tape Challenge, a campaign to review all potentially unnecessary regulation on business over this Parliamentary Term. The Code was included as a potential area for change during the 'Hospitality' section of the challenge that took place in 2011. The outcome was a consultation on the future of the Code. As part of this, the mobile vendor industry was asked what amendments could be made that would make it fit for purpose and reduce burdens on their businesses.

7.2 Compliance with the Code is evidence that mobile vendors have complied with section 62(3) of the Control of Pollution Act 1974. In addition, it assists vendors to avoid chiming in such a way to as to cause a statutory nuisance under section 79(1)(ga) of the Environmental Protection Act 1990 or, failing that, is evidence that they have used 'best practical means' to prevent or counteract the effects of any nuisance caused by their activities. The Code therefore provides vendors with a degree of certainty that, provided they comply with it, their activities will not lead to liability under the above legislation and that they will have a robust defence should proceedings be taken against them.

7.3 As well as keeping the original Code unaltered or amending its provisions, consideration was given to keeping the Code but in the form of a non-statutory industry Code of Practice (led and managed by relevant industry bodies, rather than the Government); or scrapping the Code altogether. Following industry interest, we also consulted on whether the Control of Pollution Act itself should be modified to extend the times between which it is legal to chime.

8. Consultation outcome

8.1 The public consultation, which covered England only, was launched on 8th March 2012 and lasted 12 weeks, closing 31st May 2012. The Government received responses from 57 organisations and individuals. The responses were broadly split between a) members of the public and other interested parties, such as noise pressure groups, who wanted to keep the Code in its original form; and b) industry organisations and some members of the public, who wanted the Code to be made less restrictive.

8.2 The two other options (keeping the Code but in the form of a non-statutory industry Code of Practice or scrapping the Code altogether) attracted no support in the consultation and were therefore not pursued further.

8.3 The option to keep the Code unchanged was supported by 54% of respondents, including the Noise Abatement Society and 6 local authority environmental health departments, predominantly on the grounds that the Code works well in its current state, and by 18 members of the public, arguing in the main that the noise environment would be likely to worsen if the guidelines for chiming were made less restrictive. An additional 6 members of the public made no clear option preference but argued against chiming in general.

8.4 The option to make the Code less restrictive was supported by 33% of respondents comprising the Ice Cream Alliance and 6 other industry organisations, the Chartered Institute of Environmental Health, 4 local authority environmental health departments and 2 noise consultancy organisations. They argued that the Code is overly restrictive in its current state. In addition, 5 members of the public made no clear option preference but generally argued in favour of chiming. The remaining 13% of responses expressed no preference between the options.

8.5 We also consulted on extending the times of day between which it is legal to chime, following industry interest. 9 respondents (7 industry organisations and 2 local authorities) supported the industry's wish to increase permitted chiming hours. However, strong arguments were made against it by the remaining 21 respondents who commented on this issue (6 local authorities, the Chartered Institute of Environmental Health, the Noise Abatement Society, 2 noise consultancy organisations and 11 members of the public).

8.6 After careful consideration of the responses, the Government decided to keep the Code but make it less restrictive on mobile vendors. We also decided not to extend the hours between which it is legal to chime. Making the Code less restrictive but not extending the hours between which it is legal to chime strikes an appropriate balance that provides more flexibility for vendors whilst still providing a framework for good practice and minimising the risk of disturbance.

8.7 This continues to achieve the overall legislative objective of the management of noise in the context of sustainable development. The Government recognises that mobile vendors support the existence of a Code of Practice in order to provide greater certainty that they will not be prosecuted for causing annoyance if following its provisions.

8.8 Further information can be found in the Summary of Responses and Government Response to the consultation, which is available at: https://www.gov.uk/government/consultations/code-of-practice-on-noise-from-ice-cream-van-chimes-etc-1982.

9. Guidance

9.1 The "Code of Practice on Noise from Ice-Cream Van Chimes Etc in England 2013" may be downloaded from the Department for Environment, Food and Rural Affairs website at https://www.gov.uk. A hard copy of the code of practice may be requested by writing to the Customer Contact Unit, Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London, SW1P 3JR.

10. Impact

10.1 The impact on business, charities or voluntary bodies is positive, as we are making the Code less restrictive. It is assumed that chiming within a less restrictive Code will allow mobile vendors to better advertise their goods and generate more sales.

10.2 The instrument may have an impact on the public sector, in that local authorities could potentially see an increase in related noise complaints as a consequence of a less restrictive Code. However the additional costs are expected to be low.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business. To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to make the Code less restrictive. The mobile vendor industry was involved in the consultation and the design of the proposed amendments to the Code.

11.2 The final decision on the action taken to assist the small businesses affected was based on the consultation responses. Those industry bodies that responded were overwhelmingly in favour of making the Code less restrictive than before. The mobile vendor industry has welcomed the changes.

12. Monitoring & review

12.1 The Department will continue to monitor and review the impact of the provisions of the code of practice as part of its standard business as usual policy-making, including through the monitoring of complaint statistics.

13. Contact

Colette Clarke at the Department for Environment, Food and Rural Affairs Tel: 020 7238 1601 or email: Colette.Clarke@defra.gsi.gov.uk can answer any queries regarding the instrument.