

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 2,958 of 16th January, 1997.**

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I ASSENT,

HUGO WHITE,

GOVERNOR.

16th January, 1997.



**GIBRALTAR**

**No. 1 of 1997**

**AN ORDINANCE** to transpose into the laws of Gibraltar Council Directive 86/188/EEC on the protection of workers from the risks related to the exposure to noise at work.

**E**NACTED by the Legislature of Gibraltar.

**Title and commencement.**

1. This Ordinance may be cited as the Factories (Amendment) Ordinance 1997 and shall come into effect on such day as the Governor may appoint by notice in the Gazette.

**Amendment to section 6 of the Factories Ordinance.**

2.(1) Section 6 of the Factories Ordinance shall be amended as follows-

- (a) after the definition of “classes or description” there shall be inserted the following definition -

““daily personal noise exposure” means the level of daily personal noise exposure of an employee ascertained in accordance with Part I of the Schedule 1A but taking no account of the effect of any personal ear protector used;”;

- (b) after the definition of “driving belt” there shall be inserted the following definitions -

““exposed” means exposed whilst at work, and “exposure” shall be construed accordingly;

“the first action level” means a daily personal noise exposure of 85dB(a);”;

- (c) after the definition of “maintained” there shall be inserted the following definition -

““Minister” means the Minister charged with responsibility for employment;”;

- (d) after the definition of “owner” there shall be inserted the following definition -

““the peak action level” means a level of peak sound pressure of 200 pascals;”;

- (e) after the definition of “railway” there shall be inserted the following definition -

““representative” in relation to an employee means any person elected, chosen or designated in accordance with any law or practice to represent employees where problems arise relating to the safety and health protection of such employees at work;”;

- (f) after the definition of “sanitary convenience” there shall be inserted the following definition-

““the second action level” means a daily personal noise exposure of 90 dB(a);”;

- (g) after sub-section (5) there shall be inserted the following sub-section-

“(6) In this Ordinance, unless the context otherwise requires, any reference to-

(a) an employer includes a reference to a self-employed person and any duty imposed by this Ordinance on an employer in respect of his employees shall extend to a self-employed person in respect of himself;

(b) an employee includes a reference to a self-employed person;

and where any duty is placed by this Ordinance on an employer in respect of his employees, that employer shall, so far as is reasonably practicable, be under a like duty in respect of any other person at work who may be affected by the work carried on by him.”.

**New Part XIII of the Factories Ordinance.**

3. After Part XII of the Factories Ordinance, the following Part shall be inserted-

**“PART XIII**

**PROTECTION OF WORKERS FROM THE RISKS RELATED TO  
THE EXPOSURE TO NOISE AT WORK**

**Disapplication of duties.**

94. The duties imposed by this Part shall not extend to-

- (a) the master or crew of a sea-going ship or to the employer of such persons, in relation to the normal ship-boarding activities of a ship's crew under the direction of the master; or
- (b) the crew of any aircraft which is moving under its own power or any other person on board any such aircraft who is at work in connection with its operation.

**Assessment of exposure.**

95.(1) Every employer shall, when any of his employees is likely to be exposed to the first action level or above or to the peak action level or above, ensure that a competent person makes a noise assessment which is adequate for the purposes-

- (a) of identifying which of his employees are so exposed; and
- (b) of providing him with such information with regard to the noise to which those employees may be exposed as will facilitate compliance by the employer with his duties under sections 98, 99, 100 and 102.

(2) The noise assessment required by sub-section (1) shall be reviewed when-

- (a) there is a reason to suspect that the assessment is no longer valid; or
- (b) there has been a significant change in the work to which the assessment relates;

and, where as a result of the review changes in the assessment are required, those changes shall be made.

(3) Employees, and where appropriate, their representative, shall be associated with the assessment required by sub-section (1).

**Assessment records.**

96. Following a noise assessment made pursuant to section 95(1), the employer shall ensure that an adequate record of that assessment, and of any

review thereof carried out pursuant to section 95(2), is kept until a further noise assessment is made pursuant to section 95(1).

**Reduction of risk of hearing damage.**

97. Every employer shall reduce the risk of injury to his employees from exposure to noise, to the lowest level reasonably practicable.

**Reduction of noise exposure.**

98. Every employer shall, when any of his employees is likely to be exposed to the second action level or above, reduce, so far as is reasonably practicable (other than by the provision of personal ear protectors), the exposure to noise of that employee.

**Ear Protection.**

99.(1) Every employer shall ensure, so far as is reasonably practicable, that when any of his employees is likely to be exposed to the first action level or above in circumstances where the daily personal noise exposure of that employee is likely to be less than 90 dB(A), that employee is provided, at his request, with suitable and efficient personal ear protectors.

(2) Every employer shall ensure, so far as is reasonably practicable, that when any of his employees is likely to be exposed to the second action level or above or to the peak action level or above, that employee is provided with suitable personal ear protectors which, when properly worn, can reasonably be expected to keep the risk of damage to that employee's hearing to below that arising from exposure to the second action level or, as the case may be, to the peak action level or above.

**Ear protection zones.**

100.(1) Every employer shall, in respect of any premises under his control, ensure, so far as is reasonably practicable, that-

- (a) each ear protection zone is demarcated and identified by means of the sign specified in Part III of Schedule 1A, which sign shall include such text as indicates -

- (i) that it is an ear protection zone; and

(ii) the need for his employees to wear personal ear protectors whilst in any such zone; and

(b) none of his employees should enter any such zone unless that employee is wearing ear protectors.

(2) In this section, "ear protection zone" means any part of the premises referred to in sub-section (1) where any employee is likely to be exposed to the second action level or above or to the peak action level or above.

**Maintenance and use of equipment.**

101.(1) Every employer shall-

(a) ensure, so far as is reasonably practicable, that anything provided by him to or for the benefit of an employee in compliance with his duties under this Ordinance (other than personal ear protectors provided pursuant to section 99(1)) is fully and properly used; and

(b) ensure, so far as is reasonably practicable, that anything provided by him in compliance with his duties under this Ordinance is maintained in an efficient state, in efficient working order and in good repair.

(2) Every employee shall, so far as is reasonably practicable, fully and properly use personal ear protectors when they are provided by his employer pursuant to section 99(2) and any other protective measures provided by his employer in compliance with his duties under this Ordinance, and, if the employee discovers any defect therein, he shall report it forthwith to his employer.

**Provision of information to employees.**

102.(1) Every employer shall, in respect of any premises under his control, provide each of his employees who is likely to be exposed to the first action level or above or to the peak action level or above with adequate information, instruction and training on-

- (a) the risk of damage to that employee's hearing that such exposure may cause;
- (b) what steps that employee can take to minimize that risk;
- (c) the steps that that employee must take in order to obtain the personal ear protectors referred to in section 99(1); and
- (d) that employee's obligations under this Ordinance.

(2) Where appropriate the representatives of such employees shall receive the information specified in sub-section (1).

**Duties of employers regarding places of work and articles for use at work.**

103.(1) Every employer shall ensure, so far as is reasonably practicable, that the design, building or construction of a new place of work or substantial extension or modification to an existing place of work or plant or machinery complies with section 97.

(2) When a new article which is intended for use at work is likely to cause any employee to be exposed to the first action level or above or to the peak action level or above, the employer shall provide each of his employees who is likely to be so exposed with adequate information concerning the noise likely to be generated by that article.

**Exemptions.**

104.(1) Subject to sub-section (2), the Minister may, by a certificate in writing, exempt any employer from-

- (a) the requirement in section 98, where the daily personal noise exposure of the relevant employee, averaged over a week and ascertained in accordance with Part I of Schedule 1A, is below 90 dB(A) and there are adequate arrangements for ensuring that that average will not be exceeded; or
- (b) the requirement in section 99(2), where-
  - (i) the daily personal noise exposure of the relevant employee, averaged over a week and ascertained in

accordance with Part II of Schedule 1A, is below 90 dB(A) and there are adequate arrangements for ensuring that that average will not be exceeded,

(ii) the full and proper use of the personal ear protectors referred to in that subsection would be likely to cause risks to the health and safety of the user, or

(iii) (subject to the use of personal ear protectors affording the highest degree of personal protection which it is reasonably practicable to achieve in the circumstances) where compliance with that requirement is not reasonably practicable,

and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing.

(2) The Minister shall not grant any such exemption unless, having regard to the circumstances of the case and in particular to-

- (a) the conditions, if any, which he proposes to attach to the exemption; and
- (b) any other requirements imposed by or under any laws which apply to the case,

he is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it.”.

**New Schedule 1A to the Factories Ordinance.**

4. The following Schedule shall be inserted after Schedule 1 to the Factories Ordinance-

**“SCHEDULE 1A**

Sections 100(1)(a) and 104(1)



**PART I**

**DAILY PERSONAL EXPOSURE OF EMPLOYEES**

The daily personal noise exposure of an employee, (LEP,d) is expressed in dB(A) and is ascertained using the formula-

$$L_{EP,d} = 10 \log_{10} \left\{ \frac{1}{T_0} \int_0^{T_e} \left[ \frac{P_A(t)}{P_0} \right]^2 dt \right\}$$

where –

$T_e$  = the duration of the person's personal exposure to sound;

$T_0$  = 8 hours = 28,800 seconds;

$P_0$  = 20 $\mu$ Pa; and

$P_A(t)$  = the time-varying value of A-weighted instantaneous sound pressure in pascals in the undisturbed field in air at atmospheric pressure to which the person is exposed (in the locations occupied during the day), or the pressure of the disturbed field adjacent to the person's head adjusted to provide a notional equivalent undisturbed field pressure.

**PART II**

**WEEKLY AVERAGE OF DAILY PERSONAL NOISE EXPOSURE OF EMPLOYEES**

The weekly average of an employee's daily personal noise exposure (LEP,w) is expressed in dB(A) and is ascertained using the formula-

$$L_{EP,w} = 10 \log_{10} \left[ \frac{1}{5} \sum_{k=1}^{k=m} 10^{0.1(L_{EP,d})_k} \right]$$

where—

$(L_{EP,d})_k$  = the values of  $L_{EP,d}$  for each of the  $m$  working days in the week being considered.

**PART III**

**COMPULSORY SIGN DEMARCATING EAR PROTECTION ZONES**

The sign printed below must carry the intrinsic features as follows -

- (a) it must have a round shape, and
- (b) it must illustrate a white pictogram on a blue background (the blue part to take up at least 50% of the area of the sign).

as illustrated pictorially below-

Clerk to the House.



Eye protection must be worn      Safety helmet must be worn      Ear protection must be worn

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Passed by the Gibraltar House of Assembly on the 7th day of January, 1997.

*Factories (Amendment) Ordinance, 1997 [No. 1 of 1997]*

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D.J. REYES  
Clerk to the House  
Clerk to the Assembly.Clerk to the House