

Subsidiary Legislation made under s.58.

Control of Noise at Work Regulations 2006

LN. 2006/081

Commencement **30.11.2006***

Transposing:
Directive 2003/10/EC

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** the Minister with responsibility for Employment has appointed—*

- (a) 30 November 2006 as the day these Regulations, except in cases referred to in paragraphs (b) and (c), come into operation;*
- (b) 30 November 2008 as the day these Regulations in respect of the music and entertainment sector come into operation; and*
- (c) 30 November 2011 as the day these Regulations in relation to the master and crew of a seagoing ship come into operation. (LN. 2006/136)*

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Control of Noise at Work Regulations 2006

In exercise of the powers conferred on him by section 58 of the Factories Act and all other enabling powers, the Governor has, for the purpose of transposing into the law of Gibraltar Directive 2003/10/EC of the European Parliament and of the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) (Seventeenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), made the following Regulations:

Title and commencement.

1.(1) These Regulations may be cited as the Control of Noise at Work Regulations 2006.

(2) Subject to subregulation (3), these Regulations shall come into operation on a day to be appointed by the Minister by notice in the Gazette.

(3) Where the Minister considers that any particular sector requires a different date for the coming into operation of these Regulations, he may appoint a different date for that sector.

Interpretation.

2.(1) In these Regulations—

“daily personal noise exposure” means the level of daily personal noise exposure of an employee as ascertained in accordance with Schedule 1 Part 1, taking account of the level of noise and the duration of exposure and covering all noise;

“emergency services” include police, fire, rescue and ambulance services;

“exposure limit value” means the level of daily or weekly personal noise exposure or of peak sound pressure set out in regulation 4 which must not be exceeded;

“health surveillance” means assessment of the state of health of an employee, as related to exposure to noise;

“lower exposure action value” means the lower of the two levels of daily or weekly personal noise exposure or of peak sound pressure set out in regulation 4 which, if reached or exceeded, require specified action to be taken to reduce risk;

“Minister” means the Minister with responsibility for Employment;

“noise” means any audible sound;

“peak sound pressure” means the maximum sound pressure to which an employee is exposed, ascertained in accordance with Schedule 2;

“risk assessment” means the assessment of risk required by regulation 5;

“upper exposure action value” means the higher of the two levels of daily or weekly personal noise exposure or of peak sound pressure set out in regulation 4 which, if reached or exceeded, require specified action to be taken to reduce risk;

“weekly personal noise exposure” means the level of weekly personal noise exposure as ascertained in accordance with Schedule 1 Part 2, taking account of the level of noise and the duration of exposure and covering all noise; and

“working day” means a daily working period, irrespective of the time of day when it begins or ends, and of whether it begins or ends on the same calendar day.

(2) In these Regulations, a reference to an employee being exposed to noise is a reference to the exposure of that employee to noise which arises while he is at work, or arises out of or in connection with his work.

Application of these Regulations.

3.(1) These Regulations shall have effect with a view to protecting persons against risk to their health and safety arising from exposure to noise at work.

(2) Where a duty is placed by these Regulations on an employer in respect of his employees, the 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 out by the employer except that the duties of the employer—

(a) under regulation 9 (health surveillance) shall not extend to persons who are not his employees; and

(b) under regulation 10 (information, instruction and training) shall not extend to persons who are not his employees, unless those persons are present at the workplace where the work is being carried out.

(3) These Regulations shall apply to a self-employed person as they apply to an employer and an employee as if that self-employed person were both an employer and an employee, except that regulation 9 shall not apply to a self-employed person.

(4) These Regulations shall not apply to the master or crew of a ship or to the employer of such persons in respect of the normal shipboard activities of a ship’s crew which are carried out solely by the crew under the direction of the master, and for the purposes of this regulation “ship” includes every description of vessel used in navigation, other than a naval auxiliary.

Exposure limit values and action values.

4.(1) The lower exposure action values are—

- (a) a daily or weekly personal noise exposure of 80 dB (A-weighted); and
- (b) a peak sound pressure of 135 dB (C-weighted).

(2) The upper exposure action values are—

- (a) a daily or weekly personal noise exposure of 85 dB (A-weighted); and
- (b) a peak sound pressure of 137 dB (C-weighted).

(3) The exposure limit values are—

- (a) a daily or weekly personal noise exposure of 87 dB (A-weighted); and
- (b) a peak sound pressure of 140 dB (C-weighted).

(4) Where the exposure of an employee to noise varies markedly from day to day, an employer may use weekly personal noise exposure in place of daily personal noise exposure for the purpose of compliance with these Regulations.

(5) In applying the exposure limit values in subregulation (3), but not in applying the lower and upper exposure action values in subregulations (1) and (2), account shall be taken of the protection given to the employee by any personal hearing protectors provided by the employer in accordance with regulation 7(2).

Assessment of the risk to health and safety created by exposure to noise at the workplace.

5.(1) An employer who carries out work which is liable to expose any employees to noise at or above a lower exposure action value shall make a suitable and sufficient assessment of the risk from that noise to the health and safety of those employees, and the risk assessment shall identify the measures which need to be taken to meet the requirements of these Regulations.

(2) In conducting the risk assessment, the employer shall assess the levels of noise to which workers are exposed by means of—

- (a) observation of specific working practices;

- (b) reference to relevant information on the probable levels of noise corresponding to any equipment used in the particular working conditions; and
- (c) if necessary, measurement of the level of noise to which his employees are likely to be exposed,

and the employer shall assess whether any employees are likely to be exposed to noise at or above a lower exposure action value, an upper exposure action value, or an exposure limit value.

- (3) The risk assessment shall include consideration of–
 - (a) the level, type and duration of exposure, including any exposure to peak sound pressure;
 - (b) the effects of exposure to noise on employees or groups of employees whose health is at particular risk from such exposure;
 - (c) so far as is practicable, any effects on the health and safety of employees resulting from the interaction between noise and the use of ototoxic substances at work, or between noise and vibration;
 - (d) any indirect effects on the health and safety of employees resulting from the interaction between noise and audible warning signals or other sounds that need to be audible in order to reduce risk at work;
 - (e) any information provided by the manufacturers of work equipment;
 - (f) the availability of alternative equipment designed to reduce the emission of noise;
 - (g) any extension of exposure to noise at the workplace beyond normal working hours, including exposure in rest facilities supervised by the employer;
 - (h) appropriate information obtained following health surveillance, including, where possible, published information; and
 - (i) the availability of personal hearing protectors with adequate attenuation characteristics.
- (4) The risk assessment shall be reviewed regularly, and forthwith if–
 - (a) there is reason to suspect that the risk 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 to the risk assessment are required, those changes shall be made.

(5) The employees concerned or their representatives shall be consulted on the assessment of risk under the provisions of this regulation.

(6) The employer shall record--

- (a) the significant findings of the risk assessment as soon as is practicable after the risk assessment is made or changed; and
- (b) the measures which he has taken and which he intends to take to meet the requirements of regulations 6, 7 and 10.

Elimination or control of exposure to noise at the workplace.

6.(1) The employer shall ensure that risk from the exposure of his employees to noise is either eliminated at source or, where this is not reasonably practicable, reduced to as low a level as is reasonably practicable.

(2) If any employee is likely to be exposed to noise at or above an upper exposure action value, the employer shall reduce exposure to as low a level as is reasonably practicable by establishing and implementing a programme of organisational and technical measures, excluding the provision of personal hearing protectors, which is appropriate to the activity.

(3) The actions taken by the employer in compliance with subregulations (1) and (2) shall be based on the general principles of prevention set out in Schedule 3 and shall include consideration of--

- (a) other working methods which reduce exposure to noise;
- (b) choice of appropriate work equipment emitting the least possible noise, taking account of the work to be done;
- (c) the design and layout of workplaces, work stations and rest facilities;
- (d) suitable and sufficient information and training for employees, such that work equipment may be used correctly, in order to minimise their exposure to noise;
- (e) reduction of noise by technical means;

- (f) appropriate maintenance programmes for work equipment, the workplace and workplace systems;
 - (g) limitation of the duration and intensity of exposure to noise; and
 - (h) appropriate work schedules with adequate rest periods.
- (4) The employer shall—
- (a) ensure that his employees are not exposed to noise above an exposure limit value; or
 - (b) if an exposure limit value is exceeded he shall forthwith—
 - (i) reduce exposure to noise to below the exposure limit value;
 - (ii) identify the reason for that exposure limit value being exceeded; and
 - (iii) modify the organisational and technical measures taken in accordance with subregulations (1) and (2) and regulations 7 and 8(1) to prevent it being exceeded again.
- (5) Where rest facilities are made available to employees, the employer shall ensure that exposure to noise in these facilities is reduced to a level suitable for their purpose and conditions of use.
- (6) The employer shall adapt any measure taken in compliance with the requirements of this regulation to take account of any employee or group of employees whose health is likely to be particularly at risk from exposure to noise.
- (7) The employees concerned or their representatives shall be consulted on the measures to be taken to meet the requirements of this regulation.

Hearing Protection.

7.(1) Without prejudice to the provisions of regulation 6, an employer who carries out work which is likely to expose any employees to noise at or above a lower exposure action value shall make personal hearing protectors available upon request to any employee who is so exposed.

(2) Without prejudice to the provisions of regulation 6, if an employer is unable by other means to reduce the levels of noise to which an employee is likely to be exposed to below an

upper exposure action value, he shall provide personal hearing protectors to any employee who is so exposed.

(3) If in any area of the workplace under the control of the employer an employee is likely to be exposed to noise at or above an upper exposure action value for any reason the employer shall ensure that—

- (a) the area is designated a Hearing Protection Zone;
- (b) the area is demarcated and identified by means of the sign specified for the purpose of indicating that ear protection must be worn as set out in paragraph 3.3 of Part II of Schedule 1 to the Health and Safety (Safety Signs and Signals) Regulations, 1996; and
- (c) access to the area is restricted where this is practicable and the risk from exposure justifies it,

and shall ensure so far as is reasonably practicable that no employee enters that area unless that employee is wearing personal hearing protectors.

(4) Any personal hearing protectors made available or provided under subregulations (1) or (2) shall be selected by the employer—

- (a) so as to eliminate the risk to hearing or to reduce the risk to as low a level as is reasonably practicable; and
- (b) after consultation with the employees concerned or their representatives.

Maintenance and use of equipment.

8.(1) The employer shall ensure—

- (a) so far as is practicable that anything provided by him in compliance with his duties under these Regulations to or for the benefit of an employee, other than personal hearing protectors provided under regulation 7(1), is fully and properly used; and
- (b) that anything provided by him in compliance with his duties under these Regulations is maintained in an efficient state, in efficient working order and in good repair.

(2) Every employee shall—

- (a) make full and proper use of personal hearing protectors provided to him by his employer in compliance with regulation 7(2) and of any other control measures provided by his employer in compliance with his duties under these Regulations; and
- (b) if he discovers any defect in any personal hearing protectors or other control measures as specified in paragraph (a) report it to his employer as soon as is practicable.

Health Surveillance.

9.(1) If the risk assessment indicates that there is a risk to the health of his employees who are, or are liable to be, exposed to noise, the employer shall ensure that such employees are placed under suitable health surveillance, which shall include testing of their hearing.

(2) The employer shall ensure that a health record in respect of each of his employees who undergoes health surveillance in accordance with subregulation (1) is made and maintained and that the record or a copy thereof is kept available in a suitable form.

(3) The employer shall—

- (a) on reasonable notice being given, allow an employee access to his personal health record; and
- (b) provide the enforcing authority with copies of such health records as it may require.

(4) Where, as a result of health surveillance, an employee is found to have identifiable hearing damage the employer shall ensure that the employee is examined by a doctor and, if the doctor or any specialist to whom the doctor considers it necessary to refer the employee considers that the damage is likely to be the result of exposure to noise, the employer shall—

- (a) ensure that a suitably qualified person informs the employee accordingly;
- (b) review the risk assessment;
- (c) review any measure taken to comply with regulations 6, 7 and 8, taking into account any advice given by a doctor or occupational health professional, or by the enforcing authority;
- (d) consider assigning the employee to alternative work where there is no risk from further exposure to noise, taking into account any advice given by a doctor or occupational health professional; and

- (e) ensure continued health surveillance and provide for a review of the health of any other employee who has been similarly exposed.

(5) An employee to whom this regulation applies shall, when required by his employer and at the cost of his employer, present himself during his working hours for such health surveillance procedures as may be required for the purposes of subregulation (1).

Information, instruction and training.

10.(1) Where his employees are exposed to noise which is likely to be at or above a lower exposure action value, the employer shall provide those employees and their representatives with suitable and sufficient information, instruction and training.

(2) Without prejudice to the generality of subregulation (1), the information, instruction and training provided under that regulation shall include—

- (a) the nature of risks from exposure to noise;
- (b) the organisational and technical measures taken in order to comply with the requirements of regulation 6;
- (c) the exposure limit values and upper and lower exposure action values set out in regulation 4;
- (d) the significant findings of the risk assessment, including any measurements taken, with an explanation of those findings;
- (e) the availability and provision of personal hearing protectors under regulation 7 and their correct use in accordance with regulation 8(2);
- (f) why and how to detect and report signs of hearing damage;
- (g) the entitlement to health surveillance under regulation 9 and its purposes;
- (h) safe working practices to minimise exposure to noise; and
- (i) the collective results of any health surveillance undertaken in accordance with regulation 9 in a form calculated to prevent those results from being identified as relating to a particular person.

(3) The information, instruction and training required by subregulation (1) shall be updated to take account of significant changes in the type of work carried out or the working methods used by the employer.

(4) The employer shall ensure that any person, whether or not his employee, who carries out work in connection with the employer's duties under these Regulations has suitable and sufficient information, instruction and training.

Exemption certificates from hearing protection.

11.(1) Subject to subregulation (2), the Director may, by a certificate in writing, exempt any person or class of persons from the provisions of regulation 6(4) and regulation 7(1) and (2) where because of the nature of the work the full and proper use of personal hearing protectors would be likely to cause greater risk to health or safety than not using such protectors, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time.

(2) The Director shall not grant such an exemption unless—

- (a) it consults the employers and the employees or their representatives concerned;
- (b) it consults such other persons as it considers appropriate;
- (c) the resulting risks are reduced to as low a level as is reasonably practicable; and
- (d) the employees concerned are subjected to increased health surveillance.

Exemption certificates for emergency services.

12.(1) Subject to subregulation (2), the Director may, by a certificate in writing, exempt any person or class of persons from the provisions of regulation 6(4) and regulation 7(1) to (3) in respect of activities carried out by emergency services which conflict with the requirements of any of those provisions, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time.

(2) The Director shall not grant such an exemption unless he is satisfied that the health and safety of the employees concerned is ensured as far as possible in the light of the objectives of these Regulations.

Exemptions.

13.(1) Subject to regulation (2), the Governor may, by a certificate in writing, exempt any person or class of persons from the provisions of regulation 6(4) and regulation 7(1) to (3) in

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respect of activities carried out in the interests of security of Gibraltar which conflict with the requirements of any of those provisions, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time.

(2) The Governor shall not grant such an exemption unless he is satisfied that the health and safety of the employees concerned is ensured as far as possible in the light of the objectives of these Regulations.

SCHEDULE 1

Regulation 2(1)

PART 1

Daily Personal Noise Exposure Levels

1. The daily personal noise exposure level, $L_{EP,d}$, which corresponds to $L_{EX,8h}$ defined in international standard ISO 1999: 1990 clause 3.6, is expressed in decibels and is ascertained using the formula:

$$L_{EP,d} = L_{Aeq,T_e} + 10 \log_{10} \left(\frac{T_e}{T_0} \right)$$

where-

T_e is the duration of the person's working day, in seconds;

T_0 is 28,800 seconds (8 hours); and

L_{Aeq,T_e} is the equivalent continuous A-weighted sound pressure level, as defined in ISO 1999: 1990 clause 3.5, in decibels, that represents the sound the person is exposed to during the working day.

2. If the work is such that the daily exposure consists of two or more periods with different sound levels, the daily personal noise exposure level ($L_{EP,d}$) for the combination of periods is ascertained using the formula:

$$L_{EP,d} = 10 \log_{10} \left[\frac{1}{T_0} \sum_{i=1}^{i=n} \left(T_i 10^{0.1(L_{Aeq,T_i})} \right) \right]$$

where-

n is the number of individual periods in the working day;

T_i is the duration of period i ;

$(L_{Aeq,T_i})_i$ is the equivalent continuous A-weighted sound pressure level that represents the sound the person is exposed to during period i ; and

$\sum_{i=1}^{i=n} T_i$ is equal to T_e , the duration of the person's working day, in seconds.

PART 2

Weekly Personal Noise Exposure Levels

1. The weekly personal noise exposure, $L_{EP,w}$, which corresponds to $L_{EX,8h}$ defined in international standard ISO 1999: 1990 clause 3.6 (note 2) for a nominal week of five working days, is expressed in decibels and is ascertained using the formula:

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

where-

m is the number of working days on which the person is exposed to noise during a week; and

$(L_{EP,d})_i$ is the $L_{EP,d}$ for working day i .

SCHEDULE 2

Regulation 2(1)

Peak Sound Pressure Level

Peak sound pressure level, L_{Cpeak} , is expressed in decibels and is ascertained using the formula:

$$L_{Cpeak} = 20 \log_{10} \left[\frac{p_{Cpeak}}{p_0} \right]$$

where—

p_{Cpeak} is the maximum value of the C-weighted sound pressure, in Pascals (Pa), to which a person is exposed during the working day; and

p_0 is 20 μ Pa.

SCHEDULE 3

Regulation 6(3)

Article 6 (1) & (2) of Directive 89/391/EEC**General obligations on employers.**

1. Within the context of his responsibilities, the employer shall take the measures necessary for the safety and health protection of workers, including prevention of occupational risks and provision of information and training, as well as provision of the necessary organization and means.
2. The employer shall be alert to the need to adjust these measures to take account of changing circumstances and aim to improve existing situations.
3. The employer shall implement the measures referred to in the first paragraph on the basis of the following general principles of prevention-
 - (a) avoiding risks;
 - (b) evaluating the risks which cannot be avoided;
 - (c) combating the risks at source;
 - (d) adapting the work to the individual, especially as regards the design of workplaces, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health;
 - (e) adapting to technical progress;
 - (f) replacing the dangerous by the non-dangerous or the less dangerous;
 - (g) developing a coherent overall prevention policy which covers technology, organisation of work, working conditions, social relationships and the influence of factors relating to the working environment;
 - (h) giving collective protective measures priority over individual protective measures;
and
 - (i) giving appropriate instructions to employees.