

10 April 2006

DRAFT

S.I. No. of 2006

**Safety, Health and Welfare at Work (Control of Noise at Work)(Protection of
Employees) Regulations 2006**

Safety, Health and Welfare at Work (Control of Noise at Work)(Protection of Employees) Regulations 2006

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and Commencement.
2. Interpretation.
3. Application.
4. Exposure Limit Values and Action Values.
5. Determination and Assessment of Risks.
6. Provisions aimed at Avoiding or Reducing Exposure.
7. Personal Protection.
8. Employee Information and Training.
9. Health Surveillance.
10. Exceptional Exemption Certificates.
11. Transitional Periods.
12. Revocations and Savings.

Safety, Health and Welfare at Work (Control of Noise at Work)(Protection of Employees) Regulations 2006

I,, Minister of State at the Department of Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 58 of the Safety, Health and Welfare at Work Act 1995 (No. 10 of 2005) in relation to the matters set out in paragraphs (1), (5), (6), (15), (23), (24), (28), (30), (32) and (34) of Schedule 7 to that Act, and the Enterprise, Trade and Employment)(Delegation of Ministerial Functions) Order 2005 (S.I. No. 316 of 2005), and after consultation with the Health and Safety Authority, and for the purpose of giving effect to Directive 2003/10/EC of the European Parliament and the Council of 6 February 2003¹ hereby make the following regulations:

Citation and Commencement.

1. (1) These Regulations may be cited as the Safety, Health and Welfare at Work (Control of Noise at Work)(Protection of Employees) Regulations 2006.

(2) Subject to the transitional periods specified in Regulation 11, these Regulations shall come into operation on their making.

Interpretation.

2. (1) In these Regulations -

“Act” means the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005);

“Authority” means the Health and Safety Authority;

“daily noise exposure level ($L_{EX, 8h}$) (dB)(A) re: 20 μ Pa)" means the time-weighted average of the noise exposure level for a nominal eight-hour working day as defined by international standard ISO 1999: 1990, point 3.6, covering all noises present at work, including impulsive noise;

“Directive” means Directive 2003/10/EC of the European Parliament and of the Council of 6 February 2003¹;

“exposure action values” mean for any employee the level of daily noise exposure or peak pressure level which, if exceeded, requires specified action to be taken to reduce risk;

“exposure limit value” means for any employee the level of daily noise exposure or peak sound pressure which must not be exceeded;

“noise” means any audible sound;

“peak sound pressure (p_{peak})" means the maximum value of the “C”-frequency weighted instantaneous noise pressure;

¹ O.J. No. L 42, 15.2.2003, p. 38

“risk assessment” means the assessment of risk required by Regulation 5(1);

“weekly noise exposure level ($L_{EX, 8h}$)” means the time-weighted average of the daily noise exposure levels for a nominal week of five eight-hour working days as defined by international standard ISO 199: 1990, point 3.6 (note 2);

(2) In these Regulations a reference to a paragraph or subparagraph is to a paragraph or subparagraph in the Regulation in which the reference occurs, unless it is indicated that reference to some other Regulation is intended, and a reference to a Regulation or a Schedule is to a Regulation of, or a Schedule to, these Regulations, unless it is indicated that reference to some other Regulation or Schedule is intended.

(3) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations that it has in the Directive.

Application.

3. These Regulations shall apply to activities in which employees are or are likely to be exposed to risks, in particular the risk to hearing, from exposure to noise during their work.

Exposure Limit Values and Exposure Action Values.

4. (1) For the purposes of these Regulations, the exposure limit values and exposure action values in respect of the daily noise exposure levels and peak sound pressure are -

(a) exposure limit values -

$$L_{EX,8h} = 87 \text{ dB(A)} \text{ and } P_{\text{peak}} = 140\text{dB(C)} \text{ in relation to } 20 \mu\text{Pa.},$$

(b) upper exposure action values -

$$L_{EX,8h} = 85 \text{ dB(A)} \text{ and } P_{\text{peak}} = 137\text{dB(C)} \text{ in relation to } 20 \mu\text{Pa.},$$

(c) lower exposure action values -

$$L_{EX,8h} = 80 \text{ dB(A)} \text{ and } P_{\text{peak}} = 135\text{dB(C)} \text{ in relation to } 20 \mu\text{Pa.}$$

(2)(a) An employer, when applying the exposure limit values referred to in paragraph (1)(a) in determining an employee’s effective exposure, shall take account of the attenuation provided by individual hearing protectors worn by the employee.

(b) The exposure action values referred to in paragraphs (1)(b) and (c) shall not take account of the effect of any such hearing protectors as referred to in subparagraph (a).

(3) For activities where the daily noise exposure varies markedly from one working day to the next, the Authority may, on written application from an employer, for the purposes of applying the exposure limit values and the exposure action values, authorise him or her to use the weekly noise exposure level in place of the daily noise exposure to assess the levels of noise to which his or her employees are exposed, provided that -

- (a) the weekly noise exposure level as shown by adequate monitoring does not exceed the exposure limit value of 87db(A), and
- (b) appropriate measures are taken in order to reduce the risk associated with these activities to a minimum.

Determination and Assessment of Risks.

5. (1) Without prejudice to the requirements of section 19 of the Act, where employees are liable to be exposed to noise at work at or above a lower exposure value, an employer shall, in consultation with his or her employees or representatives, or both, make a suitable and appropriate assessment of the risk arising from such exposure.

(2) In carrying out the risk assessment referred to in paragraph (1), an employer shall, if necessary, measure the levels of noise to which his or her employees are exposed.

(3) An employer shall be responsible for the assessment referred to in paragraphs (1) and (2) being competently planned and carried out at suitable intervals and any sampling shall be representative of the daily personal exposure of an employee to noise.

(4) The methods and apparatus used in the measurement of noise at work for the purposes of these Regulations shall be adapted to the prevailing conditions, particularly in the light of the characteristics of the noise to be measured, the length of exposure, ambient factors and the characteristics of the measuring apparatus and shall make it possible to determine the parameters defined in Regulation 2 and to decide, whether in a given case, the values specified in Regulation 4 have been exceeded.

(5) An employer shall give particular attention, when carrying out a risk assessment under this Regulation to the following -

- (a) the level, type and duration of exposure, including any exposure to impulsive noise,
- (b) the exposure limit values and the exposure action values specified in Regulation 4,
- (c) the effects of exposure to noise on employees whose safety or health is at particular risk from such exposure,

- (d) as far as technically possible, any effects on employees' safety and health resulting from interactions between noise and work-related ototoxic substances and between noise and vibrations,
- (e) any indirect effects on employees' safety or health resulting from interactions between noise and warning signals or other sounds that need to be observed in order to reduce the risk of accidents,
- (f) any information on noise emission provided by the manufacturers of work equipment in accordance with relevant Community Directives,
- (g) the availability of alternative equipment designed to reduce noise emission,
- (h) the extension of exposure to noise beyond normal working hours under the employer's responsibility,
- (i) appropriate information obtained from health surveillance including, where possible, published information,
- (j) the availability of hearing protectors with adequate attenuation characteristics.

(6) Without prejudice to the provisions of section 19(3) of the Act, an employer shall review a risk assessment undertaken for the purposes of these Regulations where the results of health surveillance undertaken in accordance with Regulation 9 show it to be necessary.

(7) An employer shall record-

- (a) the findings of the risk assessment as soon as it is practicable after it is made, and
- (b) the steps which he or she has taken to meet the requirements of Regulations 6, 7 and 8.

Provisions aimed at Avoiding or Reducing Exposure.

6. (1) In compliance with the general principles of prevention set out in Schedule 3 to the Act, and in consultation with his or her employees or representatives, or both, an employer shall ensure that the risk arising from exposure of his or her employees to noise is either eliminated at source or, where this is not reasonably practicable, reduced to a minimum.

(2) In complying with the requirements of paragraph (1), an employer shall into account, in particular -

- (a) other methods of work which eliminate or reduce exposure to noise,

- (b) the choice of appropriate work equipment, including work equipment subject to Community provisions, which, taking account of the work to be done, emits the least possible noise,
- (c) the design and layout of workplaces and workstations,
- (d) adequate information and training to instruct employees to use work equipment correctly and safely in order to reduce their exposure to noise to a minimum,
- (e) noise reduction by technical means, such as -
 - (i) reducing air-borne noise, by use of shields, enclosures, and sound absorbent coverings,
 - (ii) reducing structure-borne noise, by damping or isolation,
- (f) appropriate maintenance programmes for work equipment, the workplace and workplace systems,
- (g) organisation of work to reduce noise by –
 - (i) limiting the duration and intensity of the exposure,
 - (ii) arranging appropriate work schedules with adequate rest periods.

(3) If a risk assessment referred to in Regulation 5 indicates that an upper exposure action value is exceeded an employer shall establish and implement a programme of technical or organisational measures, or both, designed to reduce exposure to noise, taking into account in particular, the measures referred to in paragraphs (1) and (2).

(4) If a risk assessment indicates that there are workplaces where employees are likely to be exposed above an upper exposure action value, an employer shall -

- (a) post signs which are clearly visible and easily legible indicating that-
 - (i) the noise level at that workplace is likely to exceed 85dB(A), and
 - (ii) hearing protectors are available and must be worn.
- (b) delimit the areas where noise levels exceed 85dB(A) and restrict access, where the risk of exposure so justifies such restrictions and where the said measures are technically feasible.

(5) Subject to Regulation 11, an employer shall-

- (a) ensure that his or her employees are not exposed to noise above an exposure limit value, or
- (b) if exposure above an exposure limit value is detected he or she shall forthwith -
 - (i) take action to reduce exposure to noise to below the limit value,
 - (ii) identify the reasons for that limit being exceeded, and
 - (iii) amend the organisational and technical measures taken in accordance with paragraphs (1) and (2) to prevent it being exceeded again.

(6) Where, owing to the nature of the activity, rest facilities are provided an employer shall ensure that noise in those facilities is reduced to a level compatible with their purpose and the conditions of use.

(7) An employer shall adapt any measure taken in compliance with the requirements of this Regulation to take account of any employee whose safety or health is at particular risk from exposure to noise.

Personal Protection

7. (1) In accordance with sections 8, 9, 10 13 and 14 of the Act, and where the risks arising from exposure to noise cannot be prevented by other means, appropriate, properly fitting, individual hearing protectors shall be made available by an employer and used by his or her employees under the conditions laid down in paragraphs (2) and (3).

(2) Where noise exposure exceeds the lower exposure action values, an employer shall make individual hearing protectors available.

(3) An employee whose exposure equals or exceeds the upper exposure action values shall use individual hearing protectors.

(4) Individual hearing protectors referred to in paragraph (1) shall be selected, following consultation with the employees concerned or their representatives, or both, so as to eliminate the risk to hearing or reduce the risk to a minimum.

(5) An employer shall ensure, as far as is reasonably practicable, that -

- (a) hearing protectors are used in accordance with paragraph (3), and
- (b) the measures taken under this Regulation are effective.

Employee Information and Training.

8. (1) Without prejudice to section 10 of the Act, an employer shall, where or her his employees are exposed to noise at work at or above the exposure action values

provide them and their representatives, or both, with suitable and sufficient information and training relating to risks resulting from exposure to noise.

(2) Without prejudice to the generality of paragraph (1), the information and training provided under that paragraph shall include -

- (a) the nature of such risks,
- (b) the organisational and technical measures taken in order to comply with the requirements of Regulation 6,
- (c) the exposure limit values and the exposure action values specified in Regulation 4,
- (d) the results of the assessment and measurements of the noise carried out in accordance with Regulation 5 and an explanation of their significance and the potential risks,
- (e) the correct use of hearing protectors,
- (f) why and how to detect and report signs of hearing damage,
- (g) the circumstances in which employees are entitled to health surveillance, and its purpose, in accordance with Regulation 9,
- (h) safe working practices to minimise exposure to noise.

Health Surveillance.

9. (1) Without prejudice to section 22 of the Act, it shall be the duty of an employer to make provision for appropriate health surveillance to be made available, under the responsibility of an occupational health care professional, to those employees for whom a risk assessment referred to in Regulation 5 reveals a risk to their health.

(2) Without prejudice to the generality of paragraph (1) an employer shall, in the case of employees whose exposure exceeds an upper exposure action value, make available the services of a registered medical practitioner to carry out, or to have carried out on his or her responsibility, a hearing check and, in the case of employees whose exposure exceeds a lower exposure action value, make available the services of an occupational health care professional to carry out preventive audiometric testing.

(3) The purpose of hearing checks and audiometric tests referred to in paragraph (2) shall be to provide early diagnosis of any hearing loss due to noise and to assist in the preservation of hearing.

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

(5) An employer shall -

- (a) on request, allow an employee access to his or her personal health record,
- (b) provide the Authority with copies of such health records as the Authority may require, and
- (c) if he or she ceases to trade, notify the Authority forthwith in writing and make available to the Authority all health records kept by him or her in accordance with these Regulations.

(6) Where, as a result of surveillance of the hearing function in accordance with this Regulation, an employee is found to have identifiable hearing damage, an occupational health care professional, shall assess whether such damage is likely to be the result of exposure to noise at work and, if so established -

- (a) every relevant employee shall be informed by the occupational health care professional of the result which relates to him or her personally; and
- (b) the employer shall -
 - (i) review the risk assessment carried out in accordance with Regulation 5,
 - (ii) review the measures provided for to eliminate or reduce risks in accordance with Regulation 6,
 - (iii) take into account the advice of the occupational healthcare professional or other suitably qualified person or the Authority in implementing any measures required to eliminate or reduce risk in accordance with Regulations 6 and 7, including the possibility of assigning the employee to alternative work where there is no risk of further exposure, and
 - (iv) arrange systematic health surveillance and provide for a review of the health status of any other employee who has been similarly exposed.

Exceptional Exemption Certificates.

10. (1) Subject to paragraphs (2) and (3), the Authority may, by a certificate in writing, exempt any person or class of persons from the requirements of Regulations 6(5) and 7(1), (2) and (3) 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 safety or health 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 Authority shall not grant an exemption under this Regulation unless -
- (a) it consults such representatives of employers and employees, and such other persons, as it considers appropriate,
 - (b) the risks resulting from the exemption concerned are reduced to as low a level as is reasonably practicable, and
 - (c) the employees concerned are subject to increased health surveillance.

(3) Notwithstanding paragraphs (1) and (2), an exemption issued under this Regulation shall be reviewed by the Authority at least once every four years and shall be revoked as soon as the reason for its issue no longer obtains.

Transitional Periods.

11. (1) In the case of employees on board seagoing vessels, Regulation 6(5) shall not apply until 15 February 2011.

(2) Subject to paragraph (3), these Regulations shall not apply, in the case of the music and entertainment sectors, until 15 February 2008.

(3) The European Communities (Protection of Workers)(Exposure to Noise) Regulations 1990 (S.I. No. 157 of 1990) shall continue to apply to the music and entertainment sectors until 14 February 2008.

Revocations and Savings.

12. Subject to Regulation 11(3), the European Communities (Protection of Workers) (Exposure to Noise) Regulations 1990 (S.I. No. 157 of 1990) are revoked.

GIVEN under my hand,
2006

Minister of State at the Department of Enterprise, Trade and Employment

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of these Regulations is to transpose Directive 2003/10/EC of the European Parliament and 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).

The Regulations revoke and replace the European Communities (Protection of Workers)(Exposure to Noise) Regulations 1990 (S.I. No. 157 of 1990), subject to those Regulations continuing to apply to the music and entertainment sectors until 15 February 2008. This interim period is based on the recognition in Directive 2003/10/EC that the particular characteristics of the music and entertainment sectors require practical guidance to allow for an effective application of the provisions laid down in the Directive. This period is to enable Member States to develop a code of conduct providing for practical guidelines which will help employers and employees in those sectors to attain the levels of protection established in the Directive and in these transposition Regulations.

As regards the prevention of the exposure of employees to harmful noise at work, the Regulations supplement and add specific detail to a range of general provisions under the Safety, Health and Welfare at Work Act 2005 arising under sections 8 (General duties of employer), 9 (Information for employees), 10 (Instruction, training and supervision of employees), 13 (Duties of employees), 14 (Interference, misuse, etc.), 19 (Hazard identification and risk assessment) and 22 (Health surveillance) of the Act.

The Regulations specify (i) “exposure action values” and (ii) “exposure limit values” relating to exposure of any employee to noise at work covering, respectively, (i) the level of daily noise exposure or peak pressure level which, if exceeded, requires specified action to be taken to reduce risk, and (ii) the level of daily noise exposure or peak sound pressure which must not be exceeded.

An employer must ensure that the risk arising from exposure of his or her employees to noise is either eliminated at source or, where this is not reasonably practicable, reduced to a minimum. Where employees are liable to be exposed to noise at work at or above a lower exposure value, an employer must make a suitable and appropriate assessment of the risk arising from such exposure. If a risk assessment indicates that an upper exposure action value is exceeded an employer must establish and implement a programme of technical or organisational measures, or both, designed to reduce exposure to noise.

An employer must ensure that his or her employees are not exposed to noise above an exposure limit value, or if exposure above an exposure limit value is detected he or she must take action to reduce exposure to noise to below the limit value, identify the reasons for that limit being exceeded, and amend the organisational and technical measures taken to prevent it being exceeded again.

Where the risks arising from exposure to noise cannot be prevented by other means, appropriate, properly fitting, individual hearing protectors must be made available by an employer and used by his or her employees.

Where noise exposure exceeds the lower exposure action values, an employer must make individual hearing protectors available and an employee whose exposure equals or exceeds the upper exposure action values must use individual hearing protectors.

An employer must ensure, as far as is reasonably practicable, that hearing protectors are used in accordance with the Regulations, and that the measures are effective.

In addition to specifying provisions relating to employee information and training, the Regulations require an employer to make provision for appropriate health surveillance to be made available to those employees for whom a risk assessment carried out under the Regulations reveals a risk to their health.