

Dear Sir or Madam

PHYSICAL AGENTS (NOISE) DIRECTIVE

You have expressed interest in progress on the European Commission's proposal for a Physical Agents Directive, first put forward in 1993. This letter and attachments bring you up to date with developments.

Background

The 1993 EC proposal for a Physical Agents Directive sought to establish a new framework for the regulation of physical agents at work applying initially to noise, vibration, optical radiation and non-optical electromagnetic fields.

In 1999 the German Presidency put forward a revised proposal limiting the scope of the Directive to vibration (hand-arm and whole body) with the intention of developing further Directives on other physical agents in later, sequential Directives. The UK supports the decision to deal with the physical agents sequentially rather than in a single Directive.

The Presidency Proposal

Following on from the political agreement on the Vibration Directive in November 2000, the Swedish Presidency introduced a proposal for a Noise Directive in January 2001. This would repeal the existing 1986 Noise Directive (86/188/EEC), implemented in the UK by the Noise at Work Regulations 1989.

The main changes in the Swedish proposal to the 1986 Directive were:

- the action values of 90 dB(A) and 85 dB(A) were reduced to a limit value of 85 dB(A) and an action value of 80 dB(A);
- there was a lower action value of 112 Pa for impulse noise instead of 200 Pa;
- health surveillance by or under the responsibility of a doctor was required at 80 dB(A) and 112 Pa;
- hearing protection, which must be worn above 85 dB(A) and 200 Pa, must reduce the risk to below 80 dB(A) and 112 Pa;
- there was no derogation provision from the hearing protection requirements;
- there were no exceptions for sea and air transport.

Negotiations

In line with the agreed negotiating strategy, UK negotiators pressed for a proper evaluation of the existing 1986 Noise Directive, an updated fiche d'impact of the proposal and proper consultation with the social partners. The European Commission's view was that this had already been undertaken with regard to the Commission's original proposal in 1993 and the UK received no support from other member states. The negotiating strategy was then to reduce the burden of the proposal on industry, in particular by seeking to raise the proposed action values towards those in the 1986 Directive.

The Swedish Presidency pressed ahead rapidly with negotiations in the Council Working Group, which often met at weekly intervals. The Presidency succeeded in a common position on 29 October 2001.

Several Member States already operate at the values proposed in the draft Directive, and it did not prove possible to persuade these and others that the values should be raised. Nevertheless, UK negotiators achieved considerable success in reducing the burdens on industry implicit in the draft without detracting from the benefits to workers' health. In particular:

- the limitation on personal noise exposure now allows hearing protection to be taken into account – in the original proposal it appeared to refer to exposure without the use of hearing protection. This means that industry is not restrained in its activities providing it has done its best to reduce noise and that workers wear appropriate hearing protection
- the limitation on personal noise exposure was agreed at 87 dB(A) rather than 85 dB(A) – a more appropriate level for a prohibition
- hearing protectors are no longer be required to reduce the risk below 80 dB(A). This would have been unnecessary in terms of health benefit and technically difficult to achieve where there were high ambient noise levels
- where noise exposure varies from day to day, it can be averaged over a week rather than over 8 hours. This will concentrate noise control on the areas of risk from continuous exposure and will release many occasionally exposed workers from many of the provisions of the Directive
- the requirement for health surveillance at 80 dB(A) is now a right to hearing checks at 85 dB(A) (as in the existing Directive). This will avoid considerable unnecessary and costly medical intervention. (*Note: later amended – see 'Conciliation' below*)
- the limitation of 60 dB(A) on noise in sleeping quarters has been deleted. This would have proved unworkable in certain industries.
- derogation powers from wearing hearing protection have been introduced where it conflicts with health and safety.
- an extra transposition period of five years from the limit on exposure has been agreed for shipping to enable technical advances in noise exposure to be incorporated in ship design.

We produced a revised Regulatory Impact Assessment of the agreed text, which suggested that some 2.2 million workers will be affected, and the costs over 10 years will be less than £30 per exposed work per year. Because noise-induced hearing loss is a long-latent disease the benefits in terms of reduced ill-health will mainly occur over a longer time period, and over 40 years will broadly equate with the costs.

Proposed amendments to the common position

After common position was reached, the text passed to the European Parliament for second reading under the co-decision procedure.

On 12 March the plenary session of the EP voted to submit nineteen amendments to the Council for Second Reading. The Council was unable to accept all of the amendments, so on 12 September a formal process of conciliation was launched.

Conciliation

On 24 October an informal agreement was reached within the European Parliament and Council. Changes to the common position text included:

- Reduction of the upper exposure peak action value from 200 to 140 Pa (Amendment 6 had proposed a reduction to 112 Pa)
- The proposal (Amendment 11) that access to noisy areas be controlled regardless of risk of exposure has now been linked to the findings of the risk assessment
- The employer must now 'make every effort' to ensure the wearing of hearing protection, rather than having to enforce the wearing of them (Amendment 13)
- The proposal (Amendment 18) giving a right to audiometric testing at the lower exposure action value has been replaced with a requirement for such testing to be available where the risk assessment identifies a risk to health
- The proposal (Amendment 20) that derogations can only be granted "after obtaining the opinion of the medical authorities responsible" now refers to consultation "where appropriate"
- The proposed two year transitional period for the music and entertainment industry (Amendment 23) has been agreed, in order to give time for Member States to issue sector specific guidance rather than to allow the European Commission to submit a separate proposal.

I attach a comparison in tabular form showing the main differences between the 1986 Directive and the conciliation text of the new Directive.

The Directive was formally adopted in early December, and appeared in the Official Journal of the European Communities on 15 February 2003. The UK now has three years to bring in implementing legislation. When new UK regulations are introduced in February 2006, they will repeal the existing Noise at Work Regulations. A revised Regulatory Impact Assessment based on the official text is attached for information.

The Health and Safety Commission will conduct a formal consultation exercise on its proposals for regulations and guidance to implement the Directive to ensure that organisations and individuals with an interest have sufficient opportunity to make their views known to the Commission.

Timetable

Nov 2002: Informal stakeholder meetings
Dec 2002: Directive adopted
Feb 2003: Publication in OJ of the EC
Mar 2004: CD with draft guidance published
Jun 2004: End of consultation period
Apr 2005: Proposals to Ministers
May 2005: Regulations made and laid
Oct 2005: Regulations and Guidance published
Feb 2006: Regulations come into force

Future Physical Agents Directives

The European Commission has been keen to see the remaining two Annexes of its 1993 Physical Agents Directive proposal – on electromagnetic fields and optical radiation – taken forward as separate Directives by upcoming Presidencies. Recently the Danish Presidency submitted an amended text on the electromagnetic fields element of the Commission's proposal. Further information on this Directive can be obtained from Kirsty Marshall whose contact details are as follows; Kirsty.Marshall@hse.gsi.gov.uk tel: 0207 717 6254.

It is expected that optical radiation will follow on from this. The UK has called on the Commission and the Presidencies to ensure that any future proposals are subject to proper evaluation and cost-benefit analysis with consultation of the social partners and expert input through the Commission's Advisory Committee.

We will maintain your details on our mailing list solely for the purpose of advising you of Physical Agents Directive developments. Please advise me if you wish to be removed from the list, if your details are incorrect, or, if we are contacting you by post, you would prefer to be contacted by e-mail.

Future updates can also be found on the HSE website at <http://www.hse.gov.uk/noise>

Yours faithfully

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