

Controlling Noise at Work: New HSE Guidance on Regulations

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The first edition of 'Controlling Noise at Work' was published in 1998, and was founded on the earlier Noise at Work Regulations 1989. It was comprehensively revised in 2005 in advance of the enactment of the Control of Noise at Work Regulations 2005 from 6 April 2006. Minor amendments to the Regulations, and the passage of time, have generated the need for a [third edition](#), which offers an opportunity to reconsider the Guidance itself, which contains a plethora of detail beyond the Regulations, and fertile material for cross-examination and submissions at trial.

Amendments

Practitioners are unlikely to encounter practical issues with the three very minor amendments which have been made to the Regulations: there are tweaks to the definitions of an Enforcing Authority at regulation 2, and a self-employed person at regulation 3, and the reflection of serial amendments in relation to EU imposed duties for personal protective equipment.

It is a measure of the comprehensive nature of the 2005 Regulations that they remain essentially unchanged after 15 years, and are about to overtake the longevity of their 1989 predecessor.

Other than these amendments to the Regulations, in express terms there are no changes to the HSE's policy on the control of noise.

What is that policy?

Learning that no changes have been made to that policy, it might be wondered what benefit can be derived by consideration of the third edition.

The reality is that it remains a comprehensive text on the practice of noise control and NIHL, such that simply revisiting it can bring great advantages for the practitioner, particularly regarding the evidence necessary to establish and resist allegations of breach of duty.

The oft-cited statement at paragraph 3 is that noise-related injury is entirely preventable if certain steps are taken (namely steps by employers to reduce exposure to noise and provide personal hearing protection and health surveillance, along with manufacturing design improvement and employee compliance with the use of protection and other control measures). For exposure after April 2006, if causation of NIHL is established on the medical evidence, this tends to suggest that one or more of these steps has not been taken.

The principal focus within the Guidance remains on the provision and use of hearing protection.

Hearing protection

Regulations 7 and 8 set out the duties owed, and while the annotated guidance is limited to 23 paragraphs, the issue takes up the far larger Part 4.

Particularly helpful, in terms of cross-examination at trial, are the photographs at page 57, which set out the common errors involved with the use of protection. While these are (relatively) well understood, and obvious, in relation to ear plugs, they are less so in relation to earmuffs. I have seen many cases turn on cross-examination as to training in the manner of insertion of ear plugs, and problems occasioned by using earmuffs with long hair, jewellery, woolly hats and safety glasses.

The dramatic decline in effectiveness of hearing protection (from 30 dB if used 100% of the time, to only 6 dB if used 50% of the time) is also recorded to overcome any omission in this regard by the engineer (at figure 22).

Other reminders

I often see considerable conflict in pleadings over the non-employee status of a claimant. Regulation 3 and its comprehensive guidance is a reminder that duties are owed to “*any person at work who may be affected by the work carried out by the employer*”, and not just direct employees (save that there is no health surveillance duty to non-employees, and no duty to provide information, training and instruction to non-employees unless they are present in the workplace where the noisy work is taking place). This is particularly relevant on multi-contractor sites.

The closest modern equivalent to paragraph 4.5.1 of the 1972 Code of Practice for reducing the exposure of employed persons to Noise comes at regulation 4(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*”). Calculation on this basis can favour claimants or defendants evidentially, and some single joint engineers will automatically calculate a weekly exposure figure if appropriate, but my experience is that most will not, and an express instruction will be required (not least to avoid the cost and delay of Part 35 questions).

If ever, somewhat unusually, an engineer has omitted reference to the 'rule of thumb' on probable noise levels, at paragraph 34 table 1 provides the template for all employers and practitioners in NIHL work: noise which is intrusive but above which normal conversation remains possible means a probable noise level of 80 dB(A), rising to 85 dB(A) if shouting is required at 2 m, and to 90 dB(A) if at 1 m.

Although it rarely arises in medical reports, there is evidence of a link between vibration and noise (beyond, of course, many vibrating tools being noisy: some studies have suggested a greater vulnerability to NIHL if operatives are exposed to hand-transmitted vibration), as well as certain ototoxic solvents and noise (see regulation 5(3)(c) and paragraph 48). There is a duty to consider these exposures when assessing the risk of exposure to noise.

Part 3 contains a comprehensive list of practical examples of noise control (namely reduction of noise at source, which remains the primary duty before protection is provided), including reducing flow noise through muffling and silencing processes, reducing air turbulence, avoiding impacts, damping vibrating panels, isolating vibrations from noise-radiating surfaces, and designing and laying out the workplace for reduced noise exposure. It is surprising how often it emerges in the course of evidence that none, let alone all, of these measures have been considered.

Summary

There is little relating to the modern practice of noise control which is not contained within the HSE's Guidance. Moreover, while strictly limited to the 2005 Regulations, there is plenty of insight into the duties owed before 2006 (and even before 1990) in relation to reducing noise at source, and the provision of protection and training regarding its use, such that this third edition should operate as a prompt to all practitioners to remind themselves of all relevant issues in all NIHL claims, even if contended exposure predates 2006.

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