1990 No. 41

PUBLIC HEALTH

Lawnmowers (Harmonization of Noise Emission Standards) Regulations (Northern Ireland) 1990

Made	*9th February 1990*
Coming into operation . .	*2nd April 1990*

The Department of Economic Development, being a Department designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to matters relating to the harmonization of sound power level requirements of equipment for cutting grass, in exercise of the powers conferred on it by that section and of every other power enabling it in that behalf, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Lawnmowers (Harmonization of Noise Emission Standards) Regulations (Northern Ireland) 1990, and shall come into operation on 2nd April 1990.

Interpretation

2.—(1) In these Regulations—

"certificate of conformity" means a certificate that the lawnmower is of a type in respect of which a laboratory test report has been issued and that it conforms with the requirements of the Directive;

"the Department" means the Department of Economic Development;

"the Directive" means the Directive adopted by the Council of the Communities concerning the approximation of the laws of the Member States relating to the permissible sound power level of lawnmowers(**c**) as amended by Commission Directive 87/252/EEC adapting it to technical progress(**d**);

"EEC mark" means a mark in the form set out in Schedule 4 which gives the information required by regulation 6(4);

"laboratory test report" means a report stating that the lawnmower tested is of a type of lawnmower in respect of which its sound power level having regard to its cutting width does not exceed the permissible sound power level set out in the Table in Schedule 2;

(a) S.I. 1985/749
(b) 1972 c. 68; section 2 is subject to Schedule 2 to that Act and is to be read with S.I. 1984/703 (N.I. 3) and S.R. 1984 No. 253
(c) 84/538/EEC. O.J. No. L300. 19.11.84. p. 171
(d) O.J. No. L117. 5.5.87. p. 22

"lawnmower" means any motorised equipment appropriate for the upkeep by cutting, by whatever method, of areas under grass used for recreational, decorative or similar purposes, but excluding—

(i) motorised cylinder mowers;

(ii) agricultural and forestry equipment;

(iii) non-independent devices, such as drawn cylinders, with cutting devices actuated by the wheels or by an integrated drawing or carrier component;

(iv) multi-purpose devices the main motorised components of which have an installed power of over 20 kw;

"listed laboratory" means a body appointed by the Department under regulation 4; and

"market" means supply by way of sale, lease, hire or hire-purchase, whether as principal or agent for another.

(2) The Interpretation Act (Northern Ireland) 1954(**a**), except section 20(2) and (3), shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Marketing of Lawnmowers

3.—(1) A person shall not on or after 1st May 1990 market any lawnmower manufactured on or after that date unless a certificate of conformity has been issued in respect thereof and the name of the manufacturer and the type of lawnmower and an EEC mark have been placed thereon under these Regulations or under the law of Great Britain or of a Member State other than the United Kingdom.

(2) Where a person ("the ostensible supplier") markets any lawnmower by supplying the same to another ("the customer") under a hire-purchase agreement, conditional sale agreement or credit sale agreement, and the ostensible supplier—

(*a*) carries on the business of financing the acquisition of goods by others by means of such agreements; and

(*b*) in the course of that business acquired his interest in the lawnmower supplied to the customer as a means of financing its acquisition by the customer from a third person ("the effective supplier")

the effective supplier and not the ostensible supplier shall be treated for the purposes of this regulation as marketing the lawnmower to the customer and any duty imposed by these Regulations on those who market lawnmowers shall accordingly fall on the effective supplier and not on the ostensible supplier.

(3) Where a person ("the ostensible supplier") markets any lawnmower by supplying the same to another ("the customer") under a lease, and the ostensible supplier—

(*a*) has not previously granted any lease to the customer in respect of that lawnmower; and

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(**a**) 1954 c. 33 (N.I.)

(*b*) carries on the business of financing the use of goods by others by means of leases; and

(*c*) in the course of that business acquired his interest in the lawnmower supplied to the customer for the purpose of financing its provision to the customer by a third person ("the effective supplier"); and

(*d*) he or his agent either—

(i) has not had physical possession of the lawnmower; or

(ii) has had physical possession of the lawnmower only for the purpose of passing it to the customer; and

(*e*) he or his agent has not modified, overhauled, repaired or restored the lawnmower;

then the effective supplier and not the ostensible supplier shall be treated for the purposes of this regulation as marketing the lawnmower to the customer and any duty imposed by these Regulations on those who market lawnmowers shall accordingly fall on the effective supplier and not on the ostensible supplier.

(4) Where—

(*a*) paragraph (3) has applied in respect of a lease; and

(*b*) the ostensible supplier grants a further lease of the lawnmower to the same customer; and

(*c*) the lawnmower has remained in the physical possession of the customer since he took possession of it under the first lease; and

(*d*) the lawnmower has not at any time been modified, overhauled, repaired or restored by or on behalf of the ostensible supplier;

then no duty shall be imposed by these Regulations on the ostensible supplier in relation to the supply by way of that further lease.

Appointment of listed laboratories

4. The Department may appoint such a body of persons as it shall think fit to test lawnmowers and to issue laboratory test reports and to do such other things as may be required or permitted under or in connection with these Regulations.

Laboratory test reports

5.—(1) An application for a laboratory test report shall be made to a listed laboratory by or on behalf of a manufacturer in writing and shall be accompanied by an information document in the form set out in Schedule 1.

(2) Where the listed laboratory is satisfied on application made to it and after testing the lawnmower in respect of which the application was made that its sound power level as measured in accordance with Annex 1 of the Directive having regard to its cutting width does not exceed the permissible sound power level set out in the Table in Schedule 2 and after payment of the prescribed fee it shall issue to the applicant a laboratory test report on that lawnmower.

(3) Where the listed laboratory is satisfied on application made to it and after testing the lawnmower in respect of which the application was made that

its sound power level as measured in accordance with Annex 1 of the Directive having regard to its cutting width exceeds the permissible sound power level set out in the Table in Schedule 2 and after payment of the prescribed fee it shall so inform the applicant in writing stating its reasons and also inform him of his right to apply for review of the decison under regulation 8.

(4) The prescribed fee payable under paragraphs (2) and (3) shall be equal to the sum of—

(*a*) the costs of the listed laboratory of and in connection with the functions carried out or to be carried out by it under these Regulations (''the relevant service''); and

(*b*) an amount on account of profit which is reasonable in the circumstances having regard to—

(i) the character and the extent of the work done or to be done by the listed laboratory in providing the relevant service, and

(ii) the commercial rate normally charged on account of profit for that work or similar work.

Certificate of conformity and EEC Mark

6.—(1) The certificate of conformity and EEC mark mentioned in regulation 3 may be issued in respect of, or placed on, a lawnmower by or on behalf of the manufacturer of any lawnmower which is of the same type as that in respect of which a laboratory test report has been issued under these Regulations or under the law of Great Britain or of a Member State other than the United Kingdom.

(2) The certificate of conformity shall be issued in respect of each such lawnmower which conforms with the type of lawnmower in respect of which the laboratory test report was issued and shall be in the form set out in Schedule 3.

(3) The name of the manufacturer of the lawnmower and the type as described in the certificate of conformity and the EEC mark shall be placed on each such lawnmower.

(4) The EEC mark shall indicate—

(*a*) the sound power level of the type of lawnmower with which that lawnmower conforms having the same cutting width as that lawnmower ascertained in accordance with the Directive by the listed laboratory, or other body having functions corresponding to those of the listed laboratory appointed under the law of Great Britain or of another Member State; or

(*b*) the sound power level of the type of lawnmower with which that lawnmower conforms having the same cutting width as that lawnmower so ascertained by the manufacturer if that sound power level is higher than that ascertained by the listed laboratory but is in accordance with the requirements of the Directive.

Conformity checks

7.—(1) The Department may carry out periodic checks of any lawnmower which is for the time being held by, or on behalf of the manufacturer, importer

or other supplier of the lawnmower, and in respect of which a certificate of conformity has been issued under these Regulations or under the law of Great Britain to ascertain whether it has been manufactured to conform with the type of lawnmower in respect of which a laboratory test report has been issued.

(2) If the Department, after checking a lawnmower under paragraph (1) of the same type as that in respect of which a laboratory test report has been issued, is satisfied that the lawnmower has not been manufactured to conform with the requirements of the Directive, the Department may give notice to the manufacturer specifying the matters mentioned in paragraph (4).

(3) If the Department is notified by another Member State that a lawnmower in respect of which a certificate of conformity has been issued has not been manufactured to conform with the requirements of the Directive, the Department may give notice to the manufacturer specifying the matters mentioned in paragraph (4).

(4) The following matters shall be specified in a notice given under paragraph (2) or (3)—

(*a*) the respects in which the lawnmower does not conform with the requirements of the Directive; and

(*b*) that unless steps are taken which ensure that the lawnmower does so conform within a specified period the right under regulation 6 to issue further certificates of conformity with respect to that lawnmower or any lawnmower of the same type and to place EEC marks thereon will be suspended or withdrawn until such time as another laboratory test report has been issued under regulation 5 or under the law of Great Britain or of a Member State other than the United Kingdom and the Department has been so informed in writing.

(5) If the Department decides that such right should be suspended or withdrawn it shall immediately give notice of the decision to the manufacturer.

(6) A notice of suspension or withdrawal under paragraph 4(*b*) or (5) shall specify the date on which the suspension or withdrawal is to take effect and shall specify the grounds for the decision.

(7) The suspension or withdrawal of the right under regulation 6 shall not affect the validity of any certificate of conformity or EEC mark already issued or placed on a lawnmower under regulation 6 or under the law of Great Britain.

Review

8.—(1) A person who is aggrieved by a decision given by a listed laboratory under regulation 5(3) may, in accordance with paragraphs (2) and (3), apply to the Department to review the decision and on such application the Department—

(*a*) shall have the like powers and duties as a listed laboratory has on an application for a laboratory test report under regulation 5,

(*b*) may hold an inquiry in connection therewith, and

(*c*) may appoint an assessor for the purpose of assisting it with its review or, without prejudice to section 23 of the Interpretation Act (Northern Ireland) 1954, any such inquiry.