1987 No. 328

PUBLIC HEALTH

Construction Plant and Equipment (Noise Emission) Regulations (Northern Ireland) 1987

Made	*13th August 1987*
Coming into operation . .	*1st October 1987*

The Department of Economic Development, being a Department designated by the European Communities (Designation) Order 1985(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to measures in respect of sound power level requirements for the marketing, placing into service and use of construction plant and equipment, 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 Construction Plant and Equipment (Noise Emission) Regulations (Northern Ireland) 1987, and shall come into operation on 1st October 1987.

Interpretation

2.—(1) In these Regulations—

"approved body" means a body appointed by the Department under regulation 4;

"certificate of conformity" means a certificate that an item of construction plant or equipment conforms with the type of construction plant or equipment in respect of which an EEC type-examination certificate has been issued;

"Commission Directives" means the Directives adopted by the Commission of the Communities which adapt the Special Directives to the requirements of technical progress(**c**);

"compressor" means any motor-driven device for circulating and compressing air other than the following two categories of device:

— devices producing air circulation of a positive pressure of not more than 1,1 bar

— devices or appliances for extraction of air from an enclosed space at a pressure not exceeding atmospheric pressure;

(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) 85/406/EEC, O.J. No. L233, 30.8.1985, p. 11, 85/407/EEC, O.J. No. L233, 30.8.1985, p. 16, 85/408/EEC, O.J. No. L233, 30.8.1985, p. 18, and 85/409/EEC, O.J. No. L233, 30.8.1985, p. 20

"construction plant" and "construction equipment" means compressors, tower cranes, welding generators, power generators and powered hand-held concrete-breakers and picks all of which are designed for use in or about the site of building or civil engineering operations and not primarily for the transport of goods or persons;

"the Department" means the Department of Economic Development;

"EEC mark" means a mark in the form set out in Schedule 4;

"EEC type-examination certificate" means a certificate that a type of construction plant or equipment conforms with the EEC type-examination requirements;

"EEC type-examination requirements" means the requirements contained in the Special Directives being requirements with respect to the sound power level of airborne noise of construction plant and equipment;

"the Framework Directive" means the Directive adopted by the Council of the Communities No. 84/532/EEC concerning the approximation of the laws of the Member State relating to common provisions for construction plant and equipment(**a**);

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

"power generator" means any device comprising a motor unit driving a rotary generator producing continuous electrical power;

"powered hand-held concrete-breaker and pick" means any hand held percussive device powered by means of electrical, hydraulic or pneumatic power or an internal combustion engine suitable for breaking concrete;

"Special Directives" means the Directives adopted by the Council of the Communities as amended by the Commission Directives, concerning the approximation of the laws of the Member States relating to the permissible sound power level of compressors(**b**), tower cranes(**c**), welding generators(**d**), power generators(**e**) and powered hand-held concrete-breakers and picks(**f**);

"tower crane" means a power-driven lifting appliance which:

— when in use, consists of a vertical tower with a jib fitted to the upper part,

— is equipped with means for raising and lowering suspended loads and for horizontal movement of such loads by variation of load-lifting radius or by slewing or by travelling of the complete appliance, or by any combination of such methods and

— is designed to be able to be removed when the work for which it was erected has been completed;

(**a**) 84/532/EEC, O.J. No. L300, 19.11.1984 p. 111
(**b**) 84/533/EEC, O.J. No. L300, 19.11.1984, p. 123
(**c**) 84/534/EEC, O.J. No. L300, 19.11.1984, p. 130
(**d**) 84/535/EEC, O.J. No. L300, 19.11.1984, p. 142
(**e**) 84/536/EEC, O.J. No. L300, 19.11.1984, p. 149
(**f**) 84/537/EEC, O.J. No. L300, 19.11.1984, p. 156

"welding generator" means any rotary device which produces a welding current.

(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 construction plant and equipment

3.—(1) A person shall not on or after 1st January 1988 market any item of construction plant or equipment manufactured on or after that date unless an EEC type-examination certificate and a certificate of conformity has been issued in respect thereof and an EEC mark has 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 item of construction plant or equipment 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 item 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 item to the customer and any duty imposed by these Regulations on those who market items of construction plant or equipment shall accordingly fall on the effective supplier and not on the ostensible supplier.

(3) Where a person ("the ostensible supplier") markets any item of construction plant or equipment 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 item; and

(*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 item 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 item, or

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

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

then the effective supplier and not the ostensible supplier shall be treated for the purposes of these Regulations as marketing the item to the customer and

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

any duty imposed by these Regulations on those who market items of construction plant or equipment 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 item to the same customer; and

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

(*d*) the item 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 approved bodies

4. The Department shall appoint a body of persons in accordance with the conditions of the Framework Directive and subject to such other conditions as it shall think fit to carry out examinations and periodic checks of construction plant and equipment and to issue EEC type-examination certificates and to do such other things as may be required or permitted under or in connection with these Regulations.

Application for EEC type-examination certificate

5.—(1) An application for an EEC type-examination certificate shall be made to the approved body by or on behalf of a manufacturer in writing and shall be accompanied by an information document duly completed so as to furnish all the information required by the information document in the form set out in Schedule 1 applicable to the construction plant or equipment of the type in respect of which the application is made together with such other documents as are required to be furnished by that document.

(2) Where in pursuance of this regulation an application has been made to an approved body in respect of a type of construction plant or equipment then no other application in any Member State for an EEC type-examination certificate in respect of construction plant or equipment of that type shall be made by or on behalf of the same manufacturer and any application made to an approved body which to the knowledge of the approved body is contrary to this paragraph shall be rejected by the approved body.

(3) Where the approved body is satisfied on application made to it and after examination of the construction plant or equipment in respect of which the application was made that the construction plant or equipment conforms to the EEC type-examination requirements and after payment of the prescribed fee it shall grant an EEC type-examination certificate in the form set out in Schedule 2 in respect of that construction plant or equipment subject to any limitation on the period of validity laid down in the Special Directive relating to such construction plant or equipment.

(4) Where the approved body is satisfied on application made to it and after examination of the construction plant or equipment in respect of which the application was made that the construction plant or equipment does not

conform to the EEC type-examination requirements and after payment of the prescribed fee it shall issue a full test failure report for such plant or equipment which states the reasons for the issue of such report and informs the applicant of his right to apply for review of the decision of the approved body under regulation 8.

(5) The approved body shall after payment of the prescribed fee extend the period of validity of an EEC type-examination certificate issued under these Regulations by one period of five years provided that an application is made in the period of twelve months immediately before the expiry of the first period for which it was granted and provided that the type of construction plant or equipment in respect of which the application is made complies with the permissible sound power level requirements laid down in the Special Directives relating to such construction plant or equipment; and if the approved body refuses to grant such extension it shall inform the applicant of his right to apply for a review of the decision of the approved body under regulation 8.

(6) The prescribed fee payable under paragraphs (3), (4) and (5) in every such case shall be equal to the sum of:—

(*a*) the costs of the approved body 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 approved body in providing the relevant service, and

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

(7) An EEC type-examination certificate may be issued or the period of validity of such a certificate may be extended under these Regulations subject to conditions with respect to the carrying out by an approved body of periodic checks of construction plant or equipment of a type in respect of which any EEC type-examination certificate is issued under these Regulations or under the law of Great Britain and, for that purpose, the entry into premises where any such construction plant or equipment is held by or on behalf of the manufacturer; and if it appears to the approved body which so issued or extended the period of validity of an EEC type-examination certificate (or such other approved body as the Department thinks fit) that there has been a breach of such conditions, or if it so appears to the Department, the approved body or the Department as the case may be may by notice under regulation 7 suspend or withdraw the EEC type-examination certificate issued or extended subject to such conditions.

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, construction plant or equipment, by or on behalf of the manufacturer of the construction plant or equipment of a type in respect of which an EEC type-examination certificate issued under these Regulations or under the law of Great Britain or of a Member State other than the United Kingdom is in force.