

EXPLANATORY MEMORANDUM TO

The Health and Safety (Miscellaneous Amendments and Revocation) Regulations (Northern Ireland) 2009

S.R. 2009 No. 227

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and Articles 17(1) to (6), 20(2), 54(1) and 55(2) of, and paragraphs 1 to 3, 5, 7 to 13, 14(1), 15, 17, 19 and 20(b) of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978 and is subject to the negative resolution procedure.
- 1.3 The rule is due to come into operation on 13 July 2009.

2. Purpose

- 2.1 The Regulations amend the Control of Noise at Work Regulations (Northern Ireland) 2006 (S.R. 2006 No.1) (“the Noise Regulations”). In this respect it is in line with a corresponding amendment to the Great Britain Control of Noise at Work Regulations 2005 (S.I. 2005/1643) (“GB Noise Regulations”).
- 2.2 The Regulations will also make a minor amendment to the Quarries Regulations (Northern Ireland) 2006 (S.R. 2006 No. 205) (“the Quarries Regulations”).
- 2.3 The Regulations also revoke paragraph 5 of Schedule 3 to the Control of Asbestos Regulations (Northern Ireland) 2007 (S.R. 2007 No.31) (“the Asbestos Regulations”) which is superfluous.

3. Background

- 3.1 Following an oversight in the transposition of the Noise Regulations, a requirement for employers to ensure that hearing protection provided for use at work complied with product safety legislation was not carried over from the Noise at Work Regulations (Northern Ireland) 1990 (S.R. 1990 No.147) (“the 1990 Regulations”) or from draft proposals for the Noise Regulations that went out to consultation in June 2004.
- 3.2 The Regulations make a small change to the Noise Regulations so as to ensure compliance with European legislation. The Noise Regulations set requirements for hearing protection equipment provided for use at work. They implement, as respects Northern Ireland, Directive 2003/10/EC of

the European Parliament and of the Council (O.J. No. L42, 15.2.2003, p. 38) on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (noise) (seventeenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC). Article 6(1) of Directive 2003/10/EC requires that hearing protectors should be made available to workers and used by them in accordance with the provisions of Council Directive 89/656/EEC on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (O.J. No. L393, 30.12.1989, p. 18-28). Article 4(1) of Council Directive 89/656/EEC requires that personal protective equipment must comply with the relevant Community provisions on design and manufacture with respect to safety and health, which means for these purposes Council Directive 89/686/EEC on the approximation of laws of the Member States relating to personal protective equipment (O.J. No. L399, 30.12.1989, p. 13-38). The UK-wide Personal Protective Equipment Regulations 2002 (S.I. 2002/1144) are for implementing Directive 89/686/EEC. The amendment of the Noise Regulations by this Statutory Rule is for fully implementing the two Articles referred to above and the effect is to require that hearing protection equipment provided at work must comply with the UK-wide Personal Protective Equipment Regulations 2002 (S.I. 2002/1144). The Transposition Note which was prepared for Directive 2003/10/EC was in fact accurate in what it said about which provisions of the implementing Regulations were for Article 6(1) and, as a result, it is not considered that it needs changing.

- 3.3 The amendment to the Quarries Regulations is to rectify a minor drafting error in Schedule 2 to those Regulations. A reference to “paragraph (b)” is to be replaced with “paragraph (a)”.
- 3.4 The revocation of paragraph 5 of Schedule 3 to the Asbestos Regulations addresses a comment made by the Examiner of Statutory Rules in his Seventh Report during the suspension of the Northern Ireland Assembly.

4. Matters of Special Interest to the Enterprise, Trade and Investment Committee

- 4.1 None

5. Consultation

- 5.1 The Health and Safety (Miscellaneous Amendments and Revocation) Regulations (Northern Ireland) 2009 have been subject to formal Health and Safety Executive for Northern Ireland (HSENI) consultation procedures. The draft Regulations, together with a full explanation of the proposed amendments, an equality screening document and an assessment of costs and benefits were published in HSENI’s consultative document (CD). The CD appeared on HSENI’s web site and letters were issued to approximately 600 consultees inviting comments on the proposals.

5.2 The consultation ran from 5 March 2008 to 6 June 2008. During the thirteen week consultation period there were approximately 110 unique visitors to the HSENI website where the downloadable CD was hosted ([The CD](#)). There were no requests for a hard copy of the CD.

5.3 A total of three responses were received. No issues were raised.

6. Position in Great Britain

6.1 The amendment of the Northern Ireland Noise Regulations does not differ in any significant way from a similar amendment of the corresponding GB Noise Regulations contained in the Health and Safety (Miscellaneous Amendments and Revocations) Regulations 2009 (S.I. 2009/693), which were made on 11 March 2009 and came into force on 6 April 2009.

6.2 The amendment to the Quarries Regulations and the partial revocation of the Asbestos Regulations address only drafting errors to Northern Ireland legislation. The Regulations will continue to maintain parity with Great Britain.

7. Equality Impact

7.1 The Statutory Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or differential aspects were identified.

8. Regulatory Impact

8.1 A regulatory impact assessment (RIA) was not prepared on these changes.

8.2 The costs and benefits of the Noise Regulations are detailed in the final RIA for those Regulations. The RIA assumed that the duty to comply with product safety legislation was in the Regulations. Given that the final RIA for the Noise Regulations assumed that this duty was in the Regulations and given that it already contained guidance and good practice that hearing protection supplied for use at work conforms to the requirements of product supply legislation etc, the cost and benefits of this amendment, over and above those set out in the final RIA, should be nil or negligible.

8.3 The amendment to the Quarries Regulations and the partial revocation of the Asbestos Regulations, which are to correct drafting errors, do not have any financial impact on Northern Ireland industry.

9. Financial Implications

- 9.1 The Regulations will have little effect on business as the amendment to the Noise Regulations reappplies requirements of community law on personal protective equipment. The guidance on the selection of hearing protection already recommends that employers should ensure hearing protection for use at work conforms to product safety legislation and is CE marked. The other amendments address legislative drafting errors. There should therefore be little or no cost to Northern Ireland businesses. There are no cost implications for HSENI.

10. Section 24 of the Northern Ireland Act 1998

- 10.1 The Department has considered the matter of Convention rights and is satisfied that there are no matters of concern.

11. EU Implications

- 11.1 An oversight in the transposition of Noise Regulations had the effect of disapplying European Community Directive 89/686/EEC on the approximation of laws of Member States relating to personal protective equipment.
- 11.2 The amendment to the Noise Regulations will reapply requirements for hearing protection to conform to community legislation on personal protective equipment intended to protect against harmful levels of noise.

12. Additional Information

- 12.1 Not applicable.

Department of Enterprise, Trade and Investment
June 2009