

**EXPLANATORY MEMORANDUM TO
THE NOISE EMISSION IN THE ENVIRONMENT BY EQUIPMENT FOR
USE OUTDOORS (AMENDMENT) REGULATIONS 2005**

2005 No. 3525

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

This instrument amends the sound power limits which are to apply to certain categories of equipment for use outdoors.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 This instrument breaks the 21-day rule. The text of Directive 2005/88/EC was published in the Official Journal on 27 December 2005 and requires Member States to apply its provisions from 3 January 2006. Unless the instrument is brought into force on that date, the United Kingdom will be in breach of its EU obligations.

- 3.2 Delaying the introduction of the instrument would also cause difficulties for UK industry. The Noise Emission Directive 2000/14/EC listed several categories of equipment within its scope, and for 22 types of such equipment the permissible sound limits were set out in two stages. These 22 types of equipment were required to meet Stage I sound limits from 3 January 2002, and it was planned that such equipment would comply with the more stringent Stage II sound power limits from 3 January 2006.

- 3.3 It has now been agreed that for 9 out of these 22 types of equipment, it is technically impossible to comply with the Stage II sound power limits. In the absence of a timely amendment to current legislation to retain the Stage I power limits, the Stage II limits would have applied from 3 January 2006 and it would have become illegal to place on the market and put into use these 9 types of equipment.

4. **Legislative Background**

- 4.1 This instrument implements Directive 2005/88/EC of the European Parliament and Council which amends Directive 2000/14/EC on noise emission in the environment by equipment for use outdoors. The Directives were introduced under Articles 251(2) and 95 EC Treaty.

4.2 This instrument, made under section 2(2) of the European Communities Act 1972, amends the Noise in the Environment by Equipment for Use Outdoors Regulations 2001 (SI 2001/1701), as previously amended by SI 2001/3958. A transposition note is attached at Annex A.

4.3 DTI submitted an explanatory memorandum (11825/05) to the Commons European Scrutiny Committee on 30 June 2005 on a *Proposal for a Directive of the European Parliament and of the Council amending Directive 2000/14/EC on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors*. The Committee did not consider it to be of particular legal or political importance and cleared it (Report 2, Session 05/06). The Lords Select Committee on the EU cleared it from Sub-Committee D by letter of 13 October 2005 to Lord Sainsbury (Progress of Scrutiny, 24/10/05, Session 05/06).

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The technical infeasibility of meeting the Stage II power limits for 9 types of equipment has been detailed in paragraph 3. The effect of not introducing this amendment would have been a considerable loss in sales by industry and a resulting deprivation for society of such equipment, much of which is used for road and building construction. These changes are particularly important to the producing industry, intermediaries and users of the equipment.

7.2 Furthermore, without this amending instrument, the objective of the original Noise Directive 2000/14/EC to ensure free trade throughout the European Union for designated equipment would have been hindered.

8. Impact

A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

Iain Nicol at the Department of Trade and Industry Tel: 020 7215 1408 or e-mail: iain.nicol@dti.gsi.gov.uk can answer any queries regarding the instrument.

Final Regulatory Impact Assessment
Standards and Technical Regulations Directorate

1. Title of proposal

Proposal for a Directive of the European Parliament and of the Council amending Directive 2000/14/EC on the approximation of the laws of the Member States relating to noise emission in the environment by equipment for use outdoors. (Published and brought into force on 27 December 2005 as Directive No. 2005/88/EC)

2. Purpose and intended effect

(i) Objective

The major objective of the Amending Directive is to allow certain types of equipment (for which clear evidence has been provided that the stage II limits of Directive 2000/14/EC are not presently technically feasible) to continue to be placed on the market and/or put into service in the European Community after 3 January 2006.

A subsidiary objective of the proposal is to provide the Commission with sufficient time to fulfil its reporting obligations under Article 20 of the original Directive 2000/14/EC. These obligations relate to a review of the Directive including the possibilities for the revision of the existing noise limits. If appropriate, the Commission will propose a further amendment to 2000/14/EC.

(ii) Background

The “Noise” Directive of 2000 set noise limits for 22 equipment types and was applicable in two stages. Stage I was applicable from 3 January 2002 and Stage II, which set more stringent noise limits, was applicable from 3 January 2006. The Council and European Parliament have, on the basis of a Commission proposal now accepted that 9 equipment types will be unable to meet the “Stage II” noise limits for technical reasons (as opposed to economic/cost reasons). The only way to allow such equipment continued access to the European market after 3 January 2006 is for an Amending Directive to be agreed and then implemented as soon as possible in the 25 Member States.

Equipment types affected by this proposal

1. Walk behind vibratory rollers;
2. Vibratory plates (>3kW);
3. Vibratory rammers;
4. Dozers (steel tracked);
5. Loaders (steel tracked > 55Kw);
6. Combustion-engine driven counterbalanced lift trucks;
7. Compacting screed paver finishers;
8. Hand-held internal combustion engine concrete breakers and picks (15<m<30); and

9. Single engine mobile cranes (except that Stage I shall continue to apply until 3 January 2008 and after that date the Stage II figures shall apply).

In addition Stage I limits will continue to apply to Lawnmowers, lawn trimmers/lawn-edge trimmers ($L \leq 50$, $70 < L \leq 120$, $L > 120$), until the report under Article 20 is available.

All other equipment required to meet Stage II limits in accordance with the 2001 Regulations must do so from 3 January 2006.

(iii) Risk Assessment

The risk being addressed is that of £1.3 billion of equipment being prevented from being placed on the European market after 3 January 2006 because the equipment cannot meet the Stage II noise emission levels. In addition, preventing new equipment from being placed on the EU market would undoubtedly mean job losses or layoffs at manufacturers, importers, distributors and possibly in the construction industry (the users). Although the amendment will allow slightly noisier (Stage I compliant) equipment to continue to be placed on the market, in general, the noise difference between the two Stages is about 2db – an amount which is virtually undetectable by a human. More importantly in terms of health, if the amendment is not made, it could also mean that construction users would make up for the shortfall by keeping in service older equipment through re-furbishment. Such equipment will be using engines which meet older, less strict exhaust emissions limits rather than the latest limits to be introduced on 1 January 2006¹.

3. Consultation

Within Government

Considerable Europe-wide consultation has already been undertaken by the Commission. Member States and stakeholders were consulted on the draft amendment text in May 2005 and so far all 25 Member States have given support to the need for a legal solution to the issue of stage II limits that are technically impossible to meet. The Department of Trade and Industry, which is responsible for negotiating the proposal, has already carried out informal consultation within DTI, DEFRA, Department of Health and NGOs concerned with noise matters including the Noise Abatement Society and the National Association for Clean Air and Environmental Protection. Those that responded supported the introduction of the Amending Directive.

Public consultation

The Department of Trade and Industry undertook a further 4-week, formal consultation, ending on 23 November 2005, and approximately 250 contacts in all

¹ The Non Road Mobile Machinery Directive 2004/26/ EC tightens NOx+HC limits by 30-40% and for most of the equipment in question it comes into force on 1 January 2006

have been consulted. These include manufacturers, trade associations, Notified Bodies and other Government Departments. No objections have been received that invalidate the European Commission's proposal, or challenge (or add to) the figures, put forward in the initial/partial Regulatory Impact Assessment.

4. Options

As the Directive has been agreed by Council and the European Parliament, there are three main options available to the UK in relation to the proposal. These are:

Option 1: The UK does not transpose the Directive.

Option 2: The UK over implements the Directive.

Option 3: The UK implements the Directive correctly with Regulations made using the European Communities Act 1972.

Risks Associated with the Options

Option 1

By not transposing the amending Directive, the UK would certainly incur infraction proceedings by the Commission. In addition, affected industry (who badly need this amendment) may rely on the direct applicability of the provisions of the Directive or may bring an action in damages against the Government for any loss incurred.

Option 2

Over implementation (gold plating) is likely to put UK manufacturers at a competitive disadvantage against EU competition.

Option 3

The recommended option - all the provisions of the Directive are implemented at the earliest opportunity.

5. Costs and benefits

Sectors and groups affected

The final RIA produced in connection with the original Noise Directive 2000/14/EC and the Noise Emission in the Environment by Equipment for Use Outdoors Regulations 2001(S.I. 2001 No. 1701) identified the business sectors affected. The relevant sectors are: Machinery and equipment not elsewhere specified; motor vehicles, trailers and semi-trailers; and other transport equipment. At that time it was estimated that there were some 250 companies operating in the UK, employing 30,000 people in total that manufacture equipment covered by Directive 2000/14/EC.

The annual UK production was estimated at around 23 million units with a sales value of some £4 billion per year.

This particular amendment affects only those manufacturers producing the equipment listed above at paragraph 2(ii). The majority of UK manufacturers of such equipment are large companies or smaller UK based divisions of foreign owned manufacturers.

Benefits of the Amendment being implemented at the earliest point

The benefit of the Directive coming into force and the UK Regulations being brought in at the earliest opportunity are that European trade in the equipment in question will continue and the equipment will be used in construction work. The Amendment will be effected in the UK by a simple amendment to the existing Noise Regulations and at the same time new, detailed guidance will be published to explain the change.

Costs if the Amendment is not implemented

If nothing were done, the 9 equipment types with annual European sales of some £1.3b will be prevented from being placed on the market and taken into service (The equivalent UK figure is about 18% of the above i.e. £234m.) In addition, there would be additional social costs as outlined above under the Risk Assessment.

Issues of Equity and Fairness

The overriding objective of this Amendment is to allow open trade within the EU to continue and the Amendment will be equally applied by all 25 Member States. Initial consultation has shown almost universal support for the proposal and there has been no suggestion that it would unduly affect one particular group.

6. Small Firms Impact Test

The equipment in question (if built in the UK at all) is mostly manufactured by larger firms. Although there may be a few SMEs manufacturing the more specialised equipment, the Amendment will apply equally to manufacturers of the 9 equipment types irrespective of the size of the firm. The Amendment will simply allow manufacturing and trading to continue in the same way it does at present. However, it might be assumed that if the Amendment is **not** implemented and equipment is prevented from being placed on the market, then any SMEs producing equipment on the list will be less able to diversify and survive the loss of business than a larger business with a wider product range.

7. Competition assessment

The Amendment will have no adverse effect on competition since the firms active in this market will be enabled by this Amendment to continue competing against each

other in manufacturing, importing, selling or hiring the equipment types listed in Section 2 above. In addition the users of such equipment, mainly in the construction sector will also be able to compete against each other in the same way as they do at present. When the initial public consultation carried out during August specifically asked whether it was thought that this Amendment might have an effect on competition, no concerns were raised.

8. Enforcement, sanctions and monitoring

The Vehicle Certification Agency (VCA) will enforce the amending legislation in the UK as with the present Noise Regulations. They will do so in accordance with the new simplification agenda, applying the principles of good enforcement set out in the Cabinet Office's Enforcement Concordat.

There are no specific requirements in the proposal for monitoring and review of its effectiveness, although Member States will be required to report to the Commission the measures they have taken to implement the adopted legislation.

9. Implementation and delivery plan

Member States are required to transpose Directive 2005/88/EC by 31 December 2005 and apply measures from 3 January 2006. The UK implementing Regulations will be in place as near to this date as possible, otherwise, we will be in breach of our EU obligations (although it is unlikely that the Commission will infract in such circumstances).

10. Post-implementation review

The proposal also provides the Commission with more time to fulfil its obligations under Article 20 of the Noise Directive. The Commission is required, not later than 3 January 2007 and every four years thereafter, to submit to the European Parliament and the Council a report concerning the Commission's experience in the implementation and administration of the Directive.

11. Summary and Recommendation

That option 3 above is chosen – “that all the provisions of the Directive are implemented at the earliest opportunity”. This is the only option that will allow the equipment types in question to continue to be placed on the European Market.

12. Declaration and publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs

Signed

Malcolm Wicks

Date 29th December 2005

Malcolm Wicks
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13. Contact Point

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TRANSPOSITION NOTE

Directive 2005/88/EC of the European Parliament and of the Council amending Directive 2000/14/EC on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors

These Regulations transpose Directive 2005/88/EC which amends Directive 2000/14/EC which laid down noise emission levels in the environment by certain equipment for use outdoors. The Secretary of State is responsible for taking measures to implement this Directive in relation to the making of these Regulations.

The only part of Directive 2005/88/EC which requires transposition is the table in Article 1. The objective of this table is to allow certain equipment, which cannot reach the Stage II noise limits specified in Directive 2000/14/EC, to be placed on the market and be taken into use from 3 January 2006 onwards when the Stage II noise limits would otherwise have come into effect. The equipment affected by the amendment is highlighted in the table by the use of footnotes, and for the rest of the equipment there is no change from the requirements specified in Directive 2000/14/EC.

Article 1 of the Directive is implemented by regulation 2 of the Regulations which substitutes a new table in Schedule 3 of the Noise in the Environment by Equipment for Use Outdoors Regulations 2001 (SI 2001/1701).