



## VAN Web Briefing

### **Falling on Deaf ears....? No more.**

An analysis of how the proposed new Noise at Work Regulations, due in late 2005, will affect the music and entertainment industry.

#### **What's happening?**

The Noise at Work Regulations 1989 cover the music and entertainment industry. Of course they do. We always knew that. But how many of us in the industry actually follow them? How many of us know what the 'second action level' is? How to measure it? What to do if it is exceeded?

For years the authorities have turned a blind eye to the frequent disregard of the sector to the Noise at Work Regulations and the sector has heaved a sign of relief and got on with what it was doing – often very noisily!

In 2005 the Noise at Work Regulations are due to be amended in line with the European Physical Agents (Noise) Directive (2003/10/EC). In an uncharacteristically subtle manner the powers that be are nevertheless making it very clear that the music and entertainment sector will be expected to comply with the new Regulations or will pay the penalties for non compliance laid down in the Health and Safety at work Act 1974.

The 1989 Regulations do not mention the music and entertainment sector, although, of course, they apply to the sector as they do in all other workplaces.

For the first time in the proposed new 2005 Regulations the sector is mentioned by name.

#### **The aims of the regulations**

Regulation 1 outlines when the Regulations will come into force. Regulation 1 (a) states that "for the music and entertainment sectors only they shall not come into force until 15<sup>th</sup> February 2008". The introduction to the draft Regulations explains "Regulation 1 (a) ..... allows a transitional period of up to two years for those in the music and entertainment sectors. Those covered by the transitional period would have a two year reprieve from complying with the new Regulations, but would have to continue to comply with the Noise at Work Regulations 1989 in the interim" (paragraph 20).

The implication, if that is not too soft a word, is more than clear. The sector WILL comply with the new

Regulations from 2008 and, in the meantime, it WILL comply with the old Regulations.

By singling out the music and entertainment industry (the only other exception to the immediate application of the Regulations is seagoing ships, who are given until 2011), the authorities are making it clear that a blind eye will no longer be turning in our direction. The sensible ones among us will recognise the inevitability of what is to follow and will start planning now in order to meet their 2008 obligations.

The Regulations describe the music and entertainment sector as “all workplaces where (a) live music is played; or (b) recorded music is played in a restaurant, bar, public house, discotheque or nightclub, or alongside live music.” Many readers of this article will find the workplaces they are responsible for included in this definition.

### **The impact**

So what are the essential features of the 2005 Noise at Work Regulations?

The most obvious change is the reduction in the levels of sound intensity at which action must be taken. In the old Regulations these were referred to as the first and second action levels. The new Regulations refer to the figures as the lower and upper exposure action values.

The New Regulations set the lower action value at 80 dB(A) and the upper at 85 dB(A). In the previous 1989 Regulations the levels were 85 dB(A) and 90 dB(A) respectively.

dB stands for decibels, which are measured in either the A weighted or the C weighted scales (You don't need to know what that means!) Decibel levels can be easily measured using a noise meter, but, to give you some idea, a quiet library kicks in at around 20 dB, a conversation, up to 60 dB and a busy street at 80dB.

The action values described in the regulations are for 8 hours of exposure or equivalent. For every three dB increase in sound intensity, the time exposure must be halved to give an equivalent dose. So 8 hours of exposure to a sound intensity of 80dB is equivalent to 4 hours exposure to a sound intensity of 83dB. Both these exposures represent the lower action value in the new Regulations.

The 2005 Regulations also introduce scope, in certain circumstances, for a weekly, rather than daily, calculation of sound exposure levels.

### **Notes for employers**

Employers and the self employed are required by the Regulations to take action when employees or other people at the workplace are exposed to a daily personal exposure (8 hours or equivalent) of sound intensity at, or in excess of, the lower action value, 80 dB(A).

Should this occur, or be likely to occur, then the employer must make a suitable and sufficient assessment of the risks posed and identify measures, including those prescribed under the Regulations, which will be taken to combat these risks. The assessment must then be implemented, evaluated and regularly reviewed.

This is a particular and specific type of risk assessment known as a noise

assessment. Details of how to undertake the assessment and what it should include will be contained in the Regulations and associated guidance. Should the exposure levels be, or be likely to be, above the second action value then the assessment must also include a measurement of actual noise levels. A competent person should undertake both the noise assessment and any associated measurement of noise levels. Where competency does not exist within an organisation then this will need to be brought in from outside.

The Regulations also state that employers must ensure that risks to employees and others from noise are minimised. Where exposure is at the second action value or above, programs of organisational and technical measures must be implemented to reduce exposure to a minimum, including the provision of appropriate personal hearing protection and the establishment of 'hearing protection zones' with restricted access and obligatory wearing of personal hearing protection. Further details of appropriate measures and use of protection will be outlined in the Regulations and associated guidance document.

### **Points to note**

The guidance to the new Regulations point out that "Noise control is not necessarily difficult or expensive. A lot of noise control is common sense and can be carried out in house." The guidance document will itself be an invaluable aid to those responsible for implementing noise control in the workplace as it describes a range of practical, organisational and control methods for controlling risks. A useful

appendix also lists methods for estimating noise exposure.

I will leave you with a quote from the introduction to the consultative document: "We recognise the difficulties musicians have in complying with noise legislation, because the generation of sound is the purpose of the activity not a by product, and artistic integrity can be compromised by wearing hearing protection. Conversely, we are not convinced that workers peripherally exposed to music in the entertainment sector (e.g. DJs, bar staff, security staff etc) cannot be protected from noise in the same way as other sectors." This suggests that the emphasis in enforcement will be on such workers rather than musicians themselves or indeed audiences (providing reasonable measures are taken in these respects.)

The new Noise at Work Regulations have just closed to stakeholder consultation. They are due to be laid before parliament, along with any agreed revisions, early next year.

In order to fully appreciate their obligations under the new Regulations and to assist with their implementation of the same, it is recommended that concerned parties purchase a copy of the guidance to the Regulations (which also contains the text of the Regulations themselves) from the Health and Safety Executive (HSE) at the address given below. The HSE also produce a range of free leaflets giving information on the subject. The Guidance document itself is likely to come in at well less than £20 and, as such, may well represent one of the best investments you have ever made. A stand alone copy of the Regulations can be purchased from The Stationary Office (TSO) at the address given below.

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### **Contact details**

The Health and Safety Executive (HSE) produce a wide range of material which is either free or very reasonably priced. A catalogue of publications is available on request.

HSE Books  
PO Box 1999  
Sudbury  
Suffolk  
CO10 2WA  
Phone: 01787 881165  
[www.hsebooks.co.uk](http://www.hsebooks.co.uk)

Copies of health and safety legislation can be obtained at a very reasonable price from The Stationary Office (TSO.)

TSO  
51 Elms Lane  
London  
SW8 5DR  
Phone: 0207 394 4200  
<http://www.tso.co.uk>