
STATUTORY INSTRUMENTS

1988 No. 361

**PUBLIC HEALTH, ENGLAND AND WALES
PUBLIC HEALTH, SCOTLAND**

NOISE

**Construction Plant and Equipment (Harmonisation
of Noise Emission Standards) Regulations 1988**

<i>Made</i>	- - - -	<i>3rd March 1988</i>
<i>Laid before Parliament</i>		<i>8th March 1988</i>
<i>Coming into force</i>	- -	<i>31st March 1988</i>

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures in respect of sound power level and sound pressure level requirements for the marketing of construction plant and equipment, in exercise of the powers conferred on him by that section and of all his other enabling powers, hereby makes the following Regulations:

Citation, commencement and extent

1. These Regulations, which extend to Great Britain, may be cited as the Construction Plant and Equipment (Harmonisation of Noise Emission Standards) Regulations 1988, and shall come into force on 31st March 1988.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires, the following expressions have the following meanings:

“approved body” means a body appointed by the Secretary of State under regulation 4;

“certificate of conformity” means a certificate that the earth-moving machine specified in the certificate has been manufactured in conformity with the EEC type-examination requirements;

“construction plant and equipment” means earth-moving machines 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;

(1) S.I.1985/749, 1987/926.

(2) 1972 c. 68.

“earth-moving machine” means any of the following items of construction plant and equipment namely:—

- (a) a hydraulic or rope-operated excavator that is to say a machine combining a self-propelled undercarriage with an upper structure capable of more than 360° rotation, which excavates, lifts, carries and dumps material by moving either a boom, an arm and bucket or a bucket controlled by winding-gear;
- (b) a dozer that is to say a self-propelled wheeled or crawler machine fitted in front with a blade which serves primarily to displace or spread materials;
- (c) a loader that is to say a self-propelled wheeled or crawler machine fitted in front with a bucket and which loads, raises, transports and dumps material by combining its own movements and those of the bucket; and
- (d) an excavator-loader that is to say a self-propelled wheeled or crawler machine, designed to be fitted with a loading bucket at the front which loads, raises, transports and dumps material by combining its own movements with those of the machine and an excavating arm at the rear which excavates, raises and dumps material by movements of the boom, arm and bucket.

“EEC mark” means an EEC mark of conformity referred to in regulation 6;

“EEC type-examination certificate” means a certificate that a type of earth-moving machine conforms with the EEC type-examination requirements;

“EEC type-examination requirements” means the requirements contained in the Special Directive being requirements with respect to the sound power level of airborne noise emitted in the environment by earth-moving machines;

“the Framework Directive” means the Directive adopted by the Council of the Communities concerning the approximation of the laws of the member States relating to common provisions for certain construction plant and equipment⁽³⁾;

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

“Special Directive” means the Directive adopted by the Council of the Communities concerning the limitation of noise emitted by hydraulic excavators, rope-operated excavators, dozers, loaders and excavator-loaders⁽⁴⁾.

(2) Any reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations.

Marketing of earth-moving machines

3.—(1) No person shall on or after 29th December 1988 market any earth-moving machine manufactured on or after that date unless an EEC type-examination certificate and a certificate of conformity has been issued in respect of that machine and an EEC mark has been placed thereon in accordance with these Regulations or under the law of Northern Ireland or of a member State other than the United Kingdom.

(2) Where a person (“the ostensible supplier”) markets any earth-moving machine 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

⁽³⁾ 84/532/EEC, OJNo. L300, 19.11.84, p.111.

⁽⁴⁾ 86/662/EEC, OJ No. L384, 31.12.86, p.1.

- (b) in the course of that business acquired his interest in the machine 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 purpose of this regulation as marketing the machine to the customer and any duty imposed by these Regulations on those who market earth-moving machines shall accordingly fall on the effective supplier and not on the ostensible supplier.

(3) Where a person (“the ostensible supplier”) markets any earth-moving machine 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 machine; 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 machine 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 machine, or
 - (ii) has had physical possession of the machine only for the purpose of passing it to the customer; and
- (e) he or his agent has not modified, overhauled, repaired or restored the machine;

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

(4) Where—

- (a) paragraph (3) of this regulation has applied in respect of a lease; and
- (b) the ostensible supplier grants a further lease of the machine to the said customer; and
- (c) the machine has remained in the physical possession of the customer since he took possession of it under the first lease; and
- (d) the machine 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 Secretary of State shall appoint a body or bodies of persons in accordance with the conditions of the Framework Directive and subject to such conditions as he shall think fit—

- (a) to carry out examinations and periodic checks of construction plant and equipment;
- (b) to issue EEC type-examination certificates; and
- (c) to do such other things as may be required or permitted under or in connection with these Regulations.

EEC type-examination certificates

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 earth-moving machine 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 earth-moving machine then no other application in any member State for an EEC type-examination certificate in respect of an earth-moving machine 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 under paragraph (1) above and after examination of the type of earth-moving machine in respect of which the application was made that the type of earth-moving machine conforms with 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 type of machine which shall be valid for a period of 6 years:

Provided that a certificate granted during a period of 6 years from the date that the Special Directive entered into force shall cease to be valid after the expiry of a period of 7 years from that date.

(4) Where the approved body is satisfied on application made to it under paragraph (1) above and after examination of the type of earth-moving machine in respect of which the application was made that the type of earth-moving machine does not conform with the EEC type-examination requirements and after payment of the prescribed fee it shall issue a full test failure report for such type of machine 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 on application made to it and after payment of the prescribed fee extend the period of validity of an EEC type-examination certificate issued under these Regulations in accordance with the conditions of the Special Directive, 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) above in every 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 earth-moving machines of a type in respect of which any EEC type-examination certificate is issued under these Regulations or under the law of Northern Ireland and, for that purpose, a duly authorised officer of an approved body may, on production if requested of his authority, at all reasonable times enter into premises where any such machine is for the time being 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 that there has been a breach of any such conditions, or if it so appears to the Secretary of State, the approved body, or the Secretary of State 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 and in the case

of a decision by the approved body it shall inform the applicant of his right to apply for the review of the decision under regulation 8.

Certificate of conformity and EEC mark of conformity

6.—(1) The manufacturer of an earth-moving machine which has been manufactured in conformity with the EEC type-examination requirements referred to in an EEC type-examination certificate issued under these Regulations or under the law of Northern Ireland or of a member State other than the United Kingdom which is in force shall issue a certificate of conformity in the form set out in Schedule 3 that such machine has been so manufactured, and shall place on the machine clear and permanent EEC marks of conformity in the form set out in Schedule 4 and shall indicate thereon the net power as defined in Annex I to Directive [80/1269/EEC](#)(5) and the corresponding swivel system.

(2) The EEC marks shall be placed on each such earth-moving machine indicating the sound power level and sound pressure level at the operator's position of the type of earth-moving machine to which it conforms ascertained in accordance with the Special Directive by the approved body or in the case of the sound power level ascertained by the manufacturer if the sound power level so ascertained is higher than that ascertained in accordance with the Special Directive but falls within the maximum permissible sound power level under that Directive.

EEC inspections

7.—(1) The approved body may carry out periodic checks of any earth-moving machine of a type in respect of which an EEC type-examination certificate has been issued under these Regulations or under the law of Northern Ireland and is in force to ascertain whether such machine has been manufactured to conform with the type of earth-moving machine so certified.

(2) If the approved body, after checking an earth-moving machine under paragraph (1) above of the same type as that in respect of which an EEC type-examination certificate issued under these Regulations or under the law of Northern Ireland is in force, is satisfied that such a machine has not been manufactured to conform with the EEC type-examination requirements in respect of such a machine, the approved body shall give notice of that fact to the holder of that EEC type-examination certificate and such notice shall specify—

- (a) the respects in which the earth-moving machine has not been manufactured so as to conform with the EEC type-examination requirements in respect of it;
- (b) that unless steps are taken which ensure that such machine does so conform within a specified period the certificate will be suspended or withdrawn; and
- (c) if the approved body thinks fit, that the certificate will be suspended immediately.

(3) If the approved body decides to suspend or withdraw an EEC type-examination certificate it shall immediately give notice of the decision to the holder of the certificate and to the Secretary of State.

(4) A notice to a holder of an EEC type-examination certificate of suspension or withdrawal given under paragraph (2) of this regulation or of suspension or withdrawal under paragraph (3) shall specify the date on which the suspension or withdrawal is to take effect and shall specify the grounds for the decision and shall inform the holder of the certificate of his right to apply for a review of the decision under regulation 8.

(5) The suspension or withdrawal of an EEC type-examination certificate shall not affect the validity of any certificate of conformity or EEC mark issued or placed on an earth-moving machine under regulation 6 or under the law of Northern Ireland.

(5) OJ No. L375, 31.12.80, p.46.

Review

8.—(1) A person who is aggrieved by a decision given by an approved body under regulation 5(4), (5) or (7) or 7(2), (3) or (4) may, in accordance with paragraphs (2) and (3) of this regulation, apply to the Secretary of State to review the decision and on such application the Secretary of State—

- (a) shall have the like powers and duties as an approved body has on an application for an EEC type-examination certificate or an extension of the period thereof under regulation 5 or under regulation 7(2), (3) or (4),
- (b) may hold an inquiry in connection therewith, and
- (c) may appoint an assessor for the purpose of assisting him with his review or any such inquiry.

(2) An application under paragraph (1) of this regulation shall be made by notice to the Secretary of State, and shall be lodged with him not later than fourteen days from the date of the decision in respect of which the application for review is made.

(3) A notice of application for review under this regulation shall state the grounds on which the application is made and shall be accompanied by the following documents:—

- (a) where the application is for review of a decision under regulation 5(4) copies of the information document which, in accordance with regulation 5(1), accompanied the application under that regulation for the certificate in question, and
- (b) where the application for review relates to the extension of the period of validity of the certificate under regulation 5(5) or the suspension or withdrawal of a certificate, a copy of that certificate.

9. Any person who without reasonable excuse contravenes or fails to comply with any of the provisions of regulation 3(1) shall be guilty of an offence, and liable on summary conviction to a fine not exceeding £2000.

Offences by corporations

10.—(1) Where an offence under these Regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate shall be deemed guilty of the offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) of this regulation shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

3rd March 1988

Robert Atkins
Parliamentary Under-Secretary of State,
Department of Trade and Industry

SCHEDULE 1

Regulation 5(1)

MODEL INFORMATION DOCUMENT

1. General

- 1.1. Name and address of manufacturer (or authorized representative):.....
- 1.2. Make (name of undertaking)
- 1.3. Trade name:

2. Machine:

- 2.1. Type:
- Series:
- Number:
- 2.2. Dimensions chart (Descriptive leaflet):
- 2.3. Length (1):

3. Technical data

- 3.1. Drive motor:.....
- Make:.....
- Type:.....
- Number:.....
- Net installed power:.....kW⁽¹⁾ at..... r.p.m.
- Other motors (if appropriate)
- Drive motor:
- Make:.....
- Type:.....
- Number:
- Net installed power:.....kW⁽¹⁾ at..... r.p.m.

3.2. Hydraulic pumps

- 3.2.1. Travelling equipment (.....)
- Producer:
- Type:.....
- Series:
- Number:
- Pressure in service:
- 3.2.2. Hydraulic system for the working equipment:.....
- Producer:

(1) Net power defined and determined in accordance with Annex 1 to Directive 80/1269/EEC of 16th December 1980.

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- 3.2.3. Cooling machinery for the hydraulic equipment:
- 3.3. Description of the measures taken to attenuate the noise (with photos as far as possible):
- 4. Attach the descriptive trade leaflet, if any.

SCHEDULE 2

Regulation 5(3)

MODEL EEC TYPE-EXAMINATION CERTIFICATE

- Name of the approved body:.....
- Notification of EEC type-examination in respect of the harmonised requirements:
- EEC type-examination No.....
- 1. Category, make and type or trade name:
- 2. Name and address of manufacturer:
- 3. Name and address of certificate holder:.....
- 4. Date of submission for EEC type-examination:.....
- 5. Certificate issued on the basis of the following requirements
- 6. Test laboratory:
- 7. Date and number of laboratory report:.....
- 8. Date of EEC type-examination:.....
- 9. The following documents, bearing the EEC type-examination number shown above, are annexed to this certificate:.....
- 10. Date of expiration of this certificate:.....
- 11. Any additional information:

(Place)..... (Date).....

(Signature)

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SCHEDULE 3

Regulation 6

EEC CERTIFICATE OF CONFORMITY

I, the undersigned,
(Surname and first names)
hereby certify that the earth-moving machine specified hereunder

- 1. Category.....
- 2. Make.....
- 3. Type.....
- 4. Type serial no. of equipment.....
- 5. Type serial no. of chassis if different from that of the equipment
- 6. Year of manufacture

has been manufactured in conformity with the EEC type-examination requirements under Special Directive 86/662/EEC as shown in the table below

TABLE

EEC type-examination No.	date of EEC type-examination certificate	name of approved body

- 7. Date of expiration of EEC type-examination certificate.....
- 8. Special provisions.....

Done at
 (Date) (Signature)

 (Position)

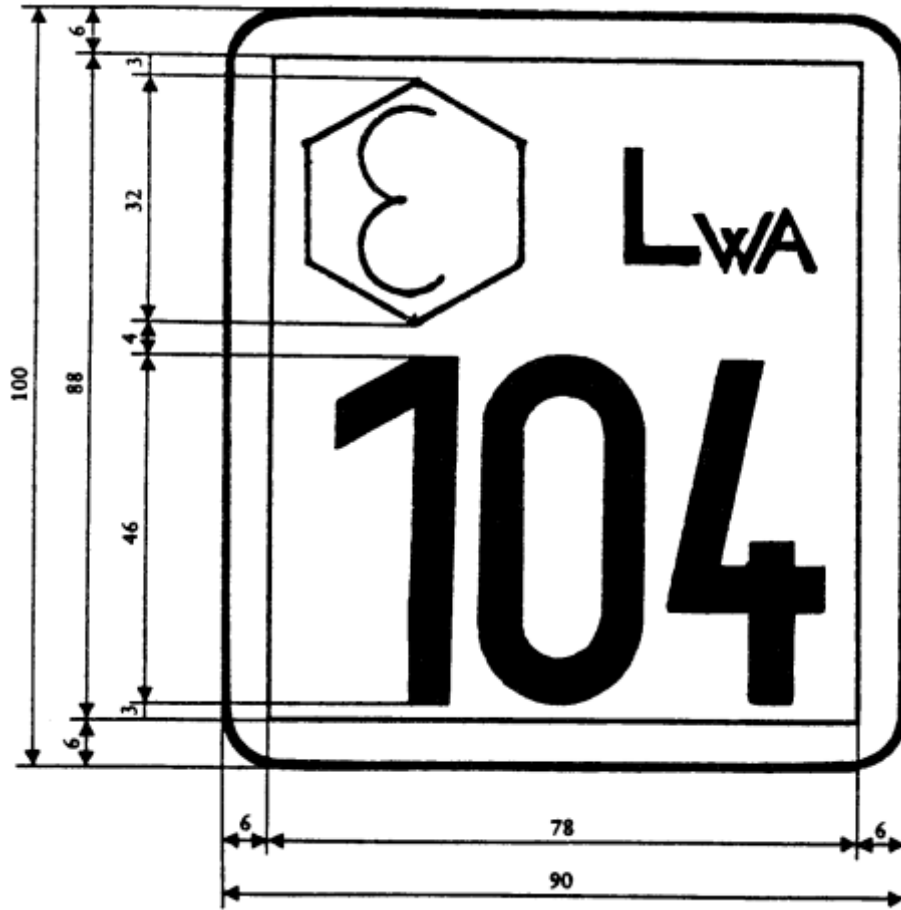
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SCHEDULE 4

Regulation 6

MODEL OF PLATE STATING THE SOUND-POWER LEVEL GUARANTEED BY THE MANUFACTURER

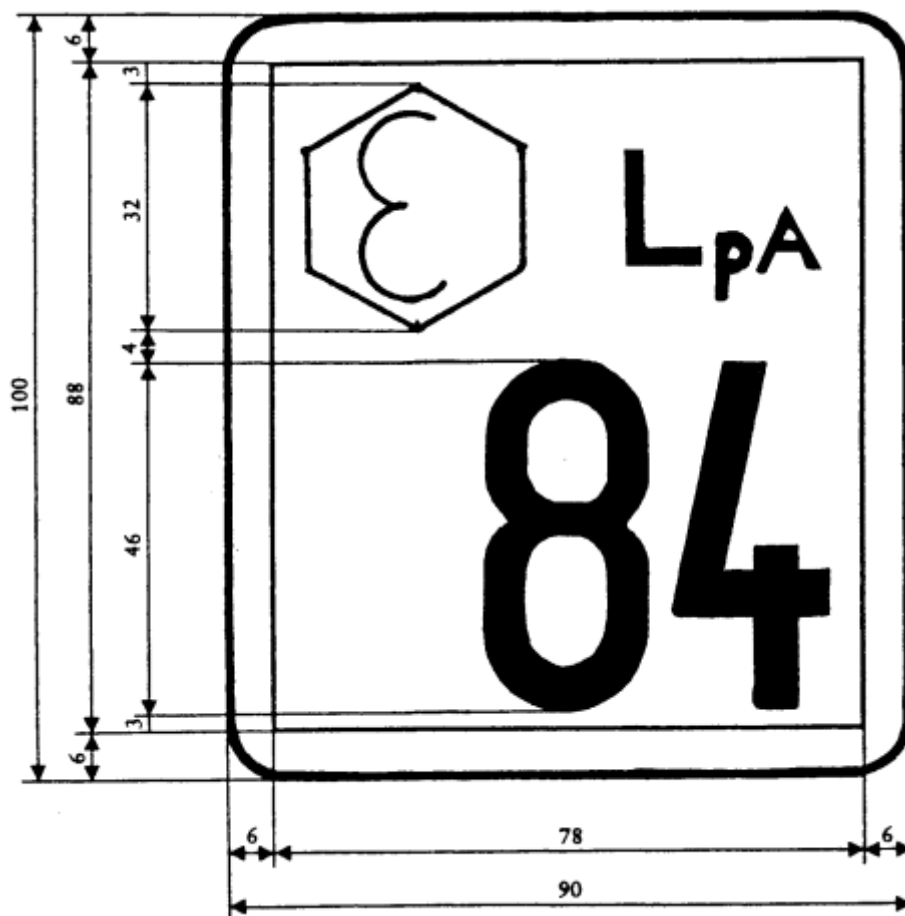
MODEL OF PLATE STATING THE SOUND-POWER LEVEL GUARANTEED BY THE MANUFACTURER (Note: The figure 104 is for purposes of illustration and represents the sound power level as mentioned in regulation 6).



MODEL OF PLATE STATING THE SOUND PRESSURE LEVEL AT THE OPERATOR'S POSITION GUARANTEED BY THE MANUFACTURER

MODEL OF PLATE STATING THE SOUND PRESSURE LEVEL AT THE OPERATOR'S POSITION GUARANTEED BY THE MANUFACTURER (Note: The figure 84 is for purposes of illustration and represents the sound pressure level as mentioned in regulation 6).

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directives [84/532/EEC](#) and [86/662/EEC](#). The Regulations apply to construction plant and equipment consisting of earth-moving machines as defined in the Regulations ie hydraulic or rope-operated excavators, dozers, loaders and excavator-loaders designed for use in or about building or civil engineering operations. The Regulations:

- (a) provide for the appointment by the Secretary of State of approved bodies whose decisions may be reviewed by the Secretary of State. (Regulations 4 and 8)
- (b) provide for application to be made by or on behalf of a manufacturer for the issue by an approved body of EEC type-examination certificates for earth-moving machines which comply with the requirements of Directive [86/662/EEC](#). (Regulation 5)
- (c) provide for the issue of certificates of conformity and the use of the EEC mark of conformity. (Regulation 6)

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- (d) provide for periodic checks to ensure compliance with the Regulations and for the suspension and withdrawal of EEC type-examination certificates in case of non-compliance. (Regulation 7)
- (e) prohibit on or after 29th December 1988 the marketing of such earth-moving machines unless an EEC type-examination certificate and a certificate of conformity have been issued under these Regulations or the law of Northern Ireland or of a member State other than the United Kingdom. (Regulations 3, 9 and 10)