

**EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING AND FISHING VESSEL (CONTROL OF NOISE AT
WORK) REGULATIONS 2007**

S.I. 2007 No. 3075

1. This explanatory memorandum has been prepared by the Maritime and Coastguard Agency and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Regulations complete implementation of Council Directive 2003/10/EC of 6 February 2003, on the introduction of measures to protect workers from the risks related to noise at work, by extending to the maritime sector the duty on employers to reduce the risk to their employees' health resulting from exposure to noise at work. Regulations introduced by the Health and Safety Executive have already implemented the Directive for land based workers.

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

3.1 None.

4. Legislative Background

4.1 Council Directive 89/391/EEC (the "Framework Directive") introduced general measures to encourage improvements in the safety and health of workers at work and was implemented by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (SI 1997/2962).

4.2 Council Directive 2003/10/EC (the seventeenth individual Directive within the meaning of Article 16(1) of the Framework Directive) introduced minimum safety and health requirements for the protection of workers from the risks related to exposure to noise at work. The Directive replaces a previous Directive on this subject which did not apply to the maritime sector. The amended proposal for the new Noise Directive proposed by the Swedish Presidency in January 2001 was submitted and cleared by the Parliamentary Scrutiny Committees in March 2001, August 2001, December 2001, May 2002, July 2002 and November 2002.

4.3 The requirements of Directive 2003/10/EC, which build on the general safety and health provisions contained in the Framework Directive, are to be implemented for workers in the maritime sector by means of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007. Regulations introduced by the Health and Safety Executive (The Control of Noise at Work Regulations 2005 (SI. 2005/1643)) have already implemented the Directive for land based workers and these new Merchant Shipping and Fishing Vessel Regulations, which follow the requirements of the Directive, complete the United Kingdom's implementation of this Directive.

4.3 No legislation, other than a requirement to safeguard health and safety in general, previously existed to protect of workers in the maritime sector from the risks to their health and safety arising from exposure to noise at work.

5. Extent

5.1 This instrument applies to all United Kingdom ships whether in the United Kingdom or anywhere else in the world, to all seafarers on such vessels irrespective of nationality, ethnic origin, religion, gender etc. They also apply to non-UK ships when in UK waters in the normal course of business, other than when exercising their right of innocent passage.

6. European Convention on Human Rights

6.1 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 Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007 complete the UK implementation of Council Directive 2003/10/EC, concerning the introduction of minimum safety and health requirements for the protection of workers from the risks related to exposure to noise at work. As mentioned above, corresponding Regulations have been produced for land based workers. It is therefore necessary to make these Regulations to ensure application of the Directive to workers in the Merchant Shipping and Fishing Sectors to avoid disparity of regulatory coverage between land based workers and those working on ships. This is especially the case at the water margin, i.e. in dock and port areas, where land based workers (e.g. stevedores and other dock workers) could be working on board a ship alongside members of the crew.

7.2 The policy objectives of Directive 2003/10/EC are to protect the health of workers from the risks arising from long-term exposure to high levels of noise. The Directive allows for a limited amount of flexibility in its transposition, relating to transitional periods and derogations. The Regulations require employers to identify which of their employees may be at risk from noise, to assess the degree of risk and to introduce measures to eliminate or minimise the risk. They fully reflect the Directive requirements.

7.3 Long-term exposure to noise can lead to permanent hearing loss and/or tinnitus (ringing or buzzing in the ears). Noise-induced hearing loss is a prescribed disease under the Industrial Injuries Disability Benefit Scheme. Between 226 and 335 new cases are assessed under the scheme each year. No separate information is however available for the maritime sector. Noise-induced hearing loss is also a leading cause for compensation claims according to the Association of British Insurers.

7.4 Trades unions have been successful in pursuing compensation claims from employers for noise in a number of land based industries, notably manufacturing, mining and the transport industry. In a recent survey, exposure to noise was the third

highest reason for a claim (after slips, trips and falls and manual handling). However until now there have been no regulations applicable to the maritime sector.

7.4 The music and entertainment sector, which has particular challenges, has been given a transitional period until 6 April 2008 to allow time for practical guidelines specifically for this sector to be developed. *[It is likely that the guidelines for the maritime sector will follow those being produced by HSE for land based workers given that the problems experienced are likely to be the same.]*

7.5 The results of the public consultation on the Regulations are briefly summarised in section 3 of the attached Regulatory Impact Assessment. A more detailed summary of the responses can be found in the table at the end of the RIA.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum at Annex 2

9. Contact

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can answer any queries regarding the instruments.

TRANSPOSITION NOTE

Relating to the implementation for the maritime sector of Council Directive 2003/10/EC of 6 February 2003 (the seventeenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) on the introduction of measures to protect workers from the risks related to exposure to noise at work.

The Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 200x (in this note referred to as “the Noise Regulations 2007) implement Council Directive 2003/10/EC for the maritime sector, which includes all commercial sea-going and inland waterway merchant and fishing vessels of whatever size. The regulations also apply to commercial and private pleasure vessels on which workers are employed.

Implementation of Council Directive 2003/10/EC in respect of workers employed in land based industries is the responsibility of the Health and Safety Executive.

The responsibility for implementation of Council Directive 2003/107/EC for the maritime sector rests with the Secretary of State through the introduction of new Regulations.

Maritime and Coastguard Agency
Department for Transport
22 October 2007

**TABLE RELATING TO IMPLEMENTATION OF ARTICLES OF DIRECTIVE
2003/10/EC**

SECTION 1 GENERAL PROVISIONS		
Article 1 Aim and scope		
Article or Paragraph of Directive	Purpose of Article or Paragraph in Directive	Implementation in the UK by
Article 1(1)	States the purpose of the Directive	Transposition not required
Article 1(2)	States that the requirements of this Directive shall apply to activities in which workers are or are likely to be exposed to risks from noise during their work.	Transposed by Regulation 4(1) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 1(3)	States that Directive 89/391/EEC shall apply fully to the whole area referred to in paragraph 1, without prejudice to more stringent and/or more specific provisions contained in this Directive.	Transposed by Regulation 4(4) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 2 Definitions		
Article 2	Sets out definitions of “peak sound pressure”, “daily noise exposure level” and “weekly noise exposure level” for the purposes of the Directive	Transposed by Regulation 2(1) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 3 Exposure limit values and exposure action values		
Article 3(1)	Sets down “exposure limit values”, “upper exposure action values” and “lower exposure action values”	Transposed by Regulation 5(1), (2) and (3) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007

Article 3(2) First sentence	Provides that when applying exposure limit values account can be taken of the attenuation effect of hearing protectors.	Transposed by Regulation 5(7) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 3(2) second sentence	Provides that for exposure action values no account may be taken of the effect of hearing protectors.	Transposed by Regulation 5(6) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 3(3)	Provides that in certain specified circumstances the weekly noise exposure level can be used in place of the daily noise exposure level.	Transposed by Regulation 5(4) and (5) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
SECTION II OBLIGATION OF EMPLOYERS		
Article 4 Determination and assessment of risks		

Article 4(1)	Requires that in carrying out the obligations laid down in Article 6(3) and Article 9(1) of Directive 89/391/EEC, the employer shall assess and, if necessary, measure the levels of noise to which workers are exposed.	Transposed by Regulation 6(1) and (2) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 4(2) First sentence	States methods and apparatus used shall be adapted to the prevailing conditions in the light of the characteristics of the noise to be measured, the length of exposure, ambient factors and the characteristics of the measuring system	Transposed by Regulation 6(2)(a) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 4(2) Second sentence	Requires that the methods and apparatus should make it possible to determine the parameters in Article 2 and to decide whether the values fixed in Article 3 have been exceeded.	Transposed by Regulation 6(2)(a) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article	Provides that the methods used	Transposed by Regulation 6(2)(c) of the

4(3)	may include sampling representative of the personal exposure of a worker	Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 4(4) – first sentence	Requires that the assessment and measurement referred to in paragraph 1 shall be planned and carried out by competent services at suitable intervals, taking particular account of the provisions of Article 7 of Directive 89/391/EEC concerning the necessary competent services or persons.	Transposed by Regulation 6(4)(a) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 4(4) – second sentence	Requires that the data obtained from the assessment and/or measurement of the level of exposure to noise shall be preserved in a suitable form so as to permit consultation at a later stage.	Transposed by Regulation 6(4)(b) and (d) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 4(5)	Requires assessment of measurement results to take account of measurement inaccuracies in accordance with metrological practice.	Transposed by Regulation 6(2)(a)(iv) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 4(6)	Requires employer when carrying out risk assessment to give particular attention to specified requirements	Transposed by Regulation 6(3) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 4(7) first sentence	Requires the employer to be in possession of an assessment of the risk in accordance with Article 9(1)(a) of Directive 89/391/EEC and shall identify which measures must be taken in accordance with Articles 5, 6, 7 and 8 of this Directive.	Transposed by Regulation 6(4)(b) and (d) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 4(7) second sentence	Requires that the risk assessment shall be recorded on a suitable medium, according to national law and practice	Transposed by Regulation 6(4)(b) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007. Whilst the Regulations specify that the risk assessment be recorded, in line with HSE's Noise Regulations, it was not considered appropriate to specify the

		medium to be used.
Article 4(7) third sentence	Requires that the risk assessment shall be kept up-to-date on a regular basis, particularly if there have been significant changes which could render it out-of-date, or when the results of health surveillance show it to be necessary.	Transposed by Regulation 6(4)(c) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
ARTICLE 5 Provisions aimed at avoiding or reducing exposure		
Article 5(1) first sentence	Requires that, taking account of technical progress and of the availability of measures to control the risk at source, the risks arising from exposure to mechanical vibration shall be eliminated at their source or reduced to a minimum.	Transposed by Regulation 7(1) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 5(1) second sentence onwards	Requires that the reduction of such risks shall be based on the general principles of prevention set out in Article 6(2) of Directive 89/391/ EEC and take into account in particular: <ul style="list-style-type: none"> (a) other working methods that require less exposure to noise; (b) the choice of appropriate work equipment, taking account of the work to be done, emitting the least possible noise including the possibility of making available to workers work equipment subject to Community provisions with the aim or effect of limiting exposure to noise; (c) the design and layout of workplaces and work stations; (d) adequate information and training to instruct workers to 	Transposed by Regulation 7(3) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007

	<p>use work equipment correctly in order to reduce their exposure to noise to a minimum;</p> <p>(e) noise reduction by technical means :-</p> <p>(i) reducing airborne noise e.g. by shields, enclosures, sound-absorbent coverings;</p> <p>(ii) reducing structure-borne noise e.g. by damping or isolation;</p> <p>(f) appropriate maintenance programmes for work equipment, the workplace and workplace systems;</p> <p>(g) organisation of work to reduce noise:</p> <p>(i) limitation of the duration and intensity of the exposure;</p> <p>(ii) appropriate work schedules with adequate rest periods</p>	
<p>Article 5(2)</p>	<p>Requires that, on the basis of the risk assessment referred to in Article 4, if the upper exposure action values are exceeded, the employer shall establish and implement a programme of technical and/or organisational measures intended to reduce to a minimum exposure to noise taking into account the measures referred to in Article 5.1</p>	<p>Transposed by Regulation 7(2) and (3) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007</p>
<p>Article 5(3)</p>	<p>Requires that on the basis of the risk assessment referred to in Article 4, workplaces where workers are likely to be exposed to noise exceeding the upper exposure action values are to be marked with appropriate signs. The areas in question are also to</p>	<p>Transposed by Regulation 8(3) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007</p>

	be delineated and access to them restricted where this is technically feasible and the risk of exposure so justifies.	
Article 5(4)	Requires that where, owing to the nature of the activity, a worker benefits from use of rest facilities noise in such facilities is to be reduced to a level compatible with their purpose and conditions of use.	Transposed by Regulation 7(6) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 5(5)	Requires that, pursuant to Article 15 of Directive 89/391/EEC, the employer shall adapt the measures referred to in this Article to the requirements of workers at particular risk.	Transposed by Regulation 7(7) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 6 Personal protection		
Article 6(1) chapeau	Requires that if the risks arising from exposure to noise cannot be prevented by other means, appropriate, properly fitting individual hearing protectors shall be made available to workers and used by them in accordance with the provisions of Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (third individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (1) and Article 13(2) of Directive 89/391/EEC and under the conditions set out below:	Transposed by Regulation 8(1) and (4) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 6(1)(a)	Requires that where noise exposure exceeds the lower exposure action values, the employer shall make individual hearing protectors available to workers;	Transposed by Regulation 8(1) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007

Article 6(1)(b)	Requires that where noise exposure matches or exceeds the upper exposure action values, individual hearing protectors shall be used;	Transposed by Regulation 8(2) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 6(1)(c)	Requires that the individual hearing protectors be so selected as to eliminate the risk to hearing or to reduce the risk to a minimum.	Transposed by Regulation 8(4) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 6(2)	Requires the employer to make every effort to ensure the wearing of hearing protectors and be responsible for checking the effectiveness of the measures taken in compliance with this Article.	Transposed by Regulation 8(2) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007 (Note 1)
Article 7 Limitation of exposure		
Article 7(1)	Under no circumstances shall the exposure of the worker as determined in accordance with Article 3(2) exceed the exposure limit values.	Transposed by Regulation 7(4) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 7(2)	Requires that, If, despite the measures taken to implement this Directive, exposures above the exposure limit values are detected, the employer shall: <ul style="list-style-type: none"> (a) take immediate action to reduce the exposure to below the exposure limit values; (b) identify the reasons why over exposure has occurred; and (c) amend the protection and prevention measures in order to avoid any recurrence. 	Transposed by Regulation 7(5) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 8 Worker information and training		
Article 8 chapeau	Without prejudice to Articles 10 and 12 of Directive 89/391/ EEC	Transposed by Regulation 9(1) of the Merchant Shipping and Fishing Vessels

	the employer shall ensure that workers who are exposed to noise at work at or above the lower exposure action values, and/or their representatives, receive information and training relating to risks resulting from exposure to noise concerning, in particular:	(Control of Noise at Work) Regulations 2007
Article 8 (a) to (h)	<p>(a) the nature of such risks;</p> <p>(b) the measures taken to implement this Directive in order to eliminate or reduce to a minimum the risks from noise, including the circumstances in which the measures apply;</p> <p>(c) the exposure limit values and the exposure action values laid down in Article 3 of this Directive;</p> <p>(d) the results of the assessment and measurement of the noise carried out in accordance with Article 4 of this Directive together with an explanation of their significance and potential risks;</p> <p>(e) the correct use of hearing protectors;</p> <p>(f) why and how to detect and report signs of hearing damage;</p> <p>(g) the circumstances in which workers are entitled to health surveillance and the purpose of health surveillance, in accordance with Article 10 of this Directive;</p> <p>(h) safe working practices to minimise exposure to noise.</p>	Transposed by Regulation 9(2) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007
Article 9 Consultation and participation of workers		
Article 9	Requires that consultation and participation of workers and/or of their representatives shall take place in accordance with Article 11 of Directive 89/391/EEC on	Transposed by Regulation 11 of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007

	<p>the matters covered by this Directive, in particular:</p> <ul style="list-style-type: none"> — the assessment of risks and identification of measures to be taken, referred to in Article 4, — the actions aimed at eliminating or reducing risks arising from exposure to noise, referred to in Article 5, — the choice of individual hearing protectors referred to in Article 6(1)(c). 	
<p>Article 10 Health Surveillance</p>		
<p>Article 10(1), first sentence</p>	<p>Requires that without prejudice to Article 14 of Directive 89/391/EEC, Member States shall adopt provisions to ensure the appropriate health surveillance of workers where the results of the assessment and measurement provided for in Article 4(1) of this Directive indicate a risk to their health.</p>	<p>Transposed by Regulation 10(1) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007</p>
<p>Article 10(1) second sentence</p>	<p>Requires that the provisions set out in the first sentence, including the requirements specified for health records and their availability shall be introduced in accordance with national law and/or practice.</p>	<p>Transposed generally by Regulation 10 of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007</p>
<p>Article 10(2)</p>	<p>Requires that a worker whose exposure exceeds the upper exposure action values shall have the right to have his/her hearing checked by a doctor or by another suitably qualified person under the responsibility of a doctor, in accordance with national law and/or practice. Preventive audiometric testing shall also be available for workers whose</p>	<p>Transposed by Regulation 10(2) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007</p>

	exposure exceeds the lower exposure action values, where the assessment and measurement provided for in Article 4(1) indicate a risk to health.	
Article 10(2) last sentence	Provides that the objectives of these checks are to provide early diagnosis of any loss of hearing due to noise, and to preserve the hearing function.	Transposed by Regulation 2(1) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007 definition of “health surveillance”
Article 10(3)	Requires Member States to establish arrangements to ensure that, for each worker who undergoes surveillance in accordance with paragraphs 1 and 2, individual health records are made and kept up to date. Health records shall contain a summary of the results of the health surveillance carried out. They shall be kept in a suitable form so as to permit any consultation at a later date, taking into account any confidentiality. Copies of the appropriate records shall be supplied to the competent authority on request. The individual worker shall, at his or her request, have access to the health records relating to him or her personally.	Transposed by Regulation 10(5) and (6) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007. NOTE - although not required by the Directive, provision has been made in Regulation 10(6) for a worker to request that his health records be made available to any person specified by him. This could apply where a seafarer changes employer to ensure that the new employer is made aware of earlier health surveillance.
Article 10(4)	Requires that where, as a result of surveillance of the hearing function, a worker is found to have identifiable hearing damage, a doctor, or a specialist if the doctor considers it necessary, shall assess whether the damage is likely to be the result of exposure to noise at work. If this is the case: (a) the worker shall be informed by the doctor or other suitably qualified person of the result which relates to him or her personally; (b) the employer shall:	Transposed by Regulation 10(3) and 10(4) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007

	<p>(i) review the risk assessment carried out pursuant to Article 4;</p> <p>(ii) review the measures provided for to eliminate or reduce risks pursuant to Articles 5 and 6;</p> <p>(iii) take into account the advice of the occupational healthcare professional or other suitably qualified person or the competent authority in implementing any measures required to eliminate or reduce risk in accordance with Articles 5 and 6, including the possibility of assigning the worker to alternative work where there is no risk of further exposure; and</p> <p>(iv) arrange systematic health surveillance and provide for a review of the health status of any other worker who has been similarly exposed.</p>	
<p>Article 11 Derogations</p>		
<p>Article 11.1</p>	<p>Requires that in exceptional situations where, because of the nature of the work, the full and proper use of individual hearing protectors would be likely to cause greater risk to health or safety than not using such protectors, Member States may grant derogations from the provisions of Articles 6(1)(a) and (b) and 7.</p>	<p>Transposed by Regulation 13(1) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007</p>
<p>Article 11.2</p>	<p>Provides that the derogations referred to in paragraph 1 shall be granted by Member States following consultation with both sides of industry and, where appropriate, with the medical</p>	<p>Transposed by Regulation 13(2) and (3) of the Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007</p>

	<p>authorities responsible, in accordance with national laws and/or practice. Such derogations must be accompanied by conditions which guarantee, taking into account the special circumstances, that the resulting risks are reduced to a minimum and that the workers concerned are subject to increased health surveillance. Derogations shall be reviewed every four years and withdrawn as soon as the justifying circumstances no longer obtain</p>	
Article 11.3	<p>Requires that every four years Member States shall forward to the Commission a list of derogations referred to in paragraph 1, indicating the exact reasons and circumstances which made them decide to grant the derogations.</p>	Transposition not required
<p>Article 12 Technical Amendments</p>		
Article 12	<p>Sets out the procedure whereby the Commission shall make amendments of a strictly technical nature</p>	Transposition not required
<p>Article 13 Committee</p>		
Article 13	<p>States that the Commission shall be assisted by the Committee referred to in Article 17 of Directive 89/391/EEC</p>	Transposition not required

Article 14 Code of Conduct		
Article 14	Requires code of conduct to be drawn up providing guidelines for music and entertainment sectors to meet their legal obligations under the Directive.	Transposition not required
Article 15 Repeal		
Article 15	States that Directive 86/188/EC is repealed from introduction of current Directive.	Transposition not required as Directive 86/188/EC was not implemented for the maritime sector
Article 16 Reports		
Article 16	Requires that every five years Member States shall provide a report to the Commission on the practical implementation of the Directive	Transposition not required
Article 17 Transposition		
Article 17	Sets out requirements relating to Transposition Date and notification to the Commission of the laws adopted to give effect to the Directive	Transposition not required
Article 18 Entry into force		
Article 18	States the Directive shall enter into force on the day of its publication in the <i>Official Journal of the European Union</i>	Transposition not required
Article 19 Addressees		

Article 19	States the Directive is addressed to the Member States	Transposition not required
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Annex 2

REGULATORY IMPACT ASSESSMENT

1. TITLE OF PROPOSALS

The Merchant Shipping and Fishing Vessel (Control of Noise at Work) Regulations 2007 (the “Noise Regulations”) implementing Council Directive 2003/10/EC on the introduction of health and safety requirements in respect of the exposure of workers to physical agents (noise).

2. PURPOSE AND INTENDED EFFECT OF MEASURES

Objectives

The Noise Regulations give effect, in respect of the maritime sector, to Council Directive 2003/10/EC on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise). Regulations to implement the Directive for land-based workers have already been introduced by the Health and Safety Executive and these new maritime Regulations will complete UK implementation by extending the provisions of the Directive to workers in the maritime sector.

Background

Council Directive 89/391/EEC (the "Framework Directive") introduced general measures to encourage improvements in the safety and health of workers at work and was implemented by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (as amended) (the "General Duties" Regulations). Directive 2003/10/EC is a "daughter" Directive of the Framework Directive and builds on its requirements by introducing specific requirements relating to minimum safety and health requirements for workers likely to be exposed to noise at work. There is no current maritime legislation covering the provisions of Directive 2003/10/EC.

Rationale for government intervention

The Directive came into force in February 2003 and was required to be implemented by 15 February 2006 except where otherwise provided by the Directive. The Health and Safety Executive have implemented regulations for land based industry but those regulations do not apply to the master and crew of a UK ship in respect of normal shipboard activities. New regulations applying the provisions of the Directive to the maritime sector are therefore required to complete full UK implementation of the Directive.

3. CONSULTATION

(i) Within Government

The Devolved Administrations and other Government Departments with a perceived interest in the subject were included in the general consultation exercise.

(ii) Public Consultation

Some 323 consultees were included in the consultation exercise of which 207 covered the Merchant Shipping sector including the Chamber of Shipping (the trade association for the majority of UK shipowners) as well as associations representing small vessel owners/operators. The remaining 116 consultees covered the fishing sector, from local associations to those at national level. In addition to the consultees referred to, who were sent hard copies of the consultation documents, electronic copies of the consultation documents were available for reference on the Maritime and Coastguard Agency website. Seven responses were received of which one offered no comments. Of the remainder:-

- two were from non-UK Classification Societies, and made comments on the Regulations which were not directly related to implementation of the EC Directive;
- the UK Maritime Pilots Association were concerned that pilots be covered by the Regulations;
- the Ministry of Defence sought the inclusion of an exemption covering personnel engaged in matters relating to national security;
- the Chamber of Shipping (the UK Shipowners' Organisation) and NUMAST (now Nautilus UK - a Seafarer's Trade Union) both raised detailed points on the draft Regulations

More detailed information on the comments received, and the responses to them, is contained in the table at the end of this Regulatory Impact Assessment.

Separate Government specific consultation was not undertaken. However those Government Departments and Agencies, including those in the devolved administrations, which appeared to have a direct interest in what was proposed, were consulted as part of the general consultation process.

4. OPTIONS

The alternatives available in respect of implementation of the Noise Directive were to:-

- (a) do nothing;
- (b) rely on the provisions of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (which implemented the Framework Directive) supplemented by guidance to implement the Noise Directive;
- (c) introduce a new single set of regulations to implement the framework directive and all the daughter Directives (including this one), the text of which would be schedules to the regulation; or
- (d) introduce a set of regulations to implement only this Directive.

So far as options (a) and (b) are concerned, only by implementing all of the provisions of the directive in regulations will the UK implement the directive in accordance with EC law.

Option (c) whilst feasible is also not considered to be a realistic option as there are currently several Directives in the pipeline for implementation, each of which would require amendment to what would become a bulky single set of frequently amended regulations. The result of this would be a set of regulations which was not user-friendly and would require cross referencing to amending regulations.

Option (d) is therefore considered the most sensible way to proceed as it permits easy identification of provisions relating to noise. This option also accords with the route adopted by HSE in their regulations thus permitting easier read across between the land-based regulations and those applicable to the maritime sector. This is essential where land-based workers e.g. stevedores covered by HSE's regulations might be working on board ships to which the maritime regulations apply.

5. COSTS AND BENEFITS

(i) Sectors and Groups Affected

Those primarily affected will be operators and managers of ships, fishing vessels, and other marine craft, including yachts, work boats etc which are registered in the UK and which have workers working on them. The Noise Regulations will apply also to any non UK vessels when operating in UK waters and also to charities and similar organisations which operate vessels. In the latter case however it will only apply to workers employed on such vessels.

(ii) Benefits

The proposal is intended to standardise the provisions relating to the provision and use of work equipment, throughout all EC Member States such that a "level playing field" applies to owners/operators of all EC registered vessels.

iii) Costs

a. Compliance costs

Consultees were asked to provide information on any costs that they envisaged would be incurred as a result of the introduction of the regulations. No information was received from either shipowners/operators or maritime unions regarding the potential for increased costs. This may not be as surprising as it seems because the Noise Directive is a daughter Directive of Directive 89/391/EEC (the “Framework Directive”) which sets down general requirements relating to the health and safety of workers, such as the carrying out of risk assessments to identify risks; removal or alleviation so far as possible of risks identified etc. The Noise Directive simply adds to these requirements by introducing more specialised requirements relating to noise and it is likely therefore that many of the requirements will already be under consideration by owners/operators.

b. Other costs

No specific comments were received indicating that any costs would be incurred. There is however a potential effect on international competitiveness in that the Noise Regulations will implement a Directive which all EU Member States must bring into force in respect of the vessels on their registers. In addition there might be potential for a reduction in the number of cases of noise related deafness or conditions arising from exposure to noise at work, with potential savings to the NHS or removal of the need to pay benefits to seafarers who can continue to work rather than being declared unfit for service as a result of noise related conditions.

c. Costs for a typical business

Given that no cost data was received from respondents to the consultation exercise it can only be assumed that no costs will be incurred or that any costs will be minimal.

6. SMALL FIRMS IMPACT TEST

No comments were received on this point. As the regulations implement an EC Directive, there is effectively no scope to minimise further the effect on small firms. In addition given that these provisions build on the requirements introduced by the Framework Directive, it is likely that many of the requirements will already be under consideration by owners/operators and the overall impact will be low.

7. COMPETITION ASSESSMENT

No comments were received on this point. As the regulations implement an EC Directive, there is effectively no scope to minimise further, than has already been done, the effect on competition. To do otherwise than fully implement the Directive could invite the risk of Infraction Proceedings.

8. ENFORCEMENT, SANCTIONS AND MONITORING

Enforcement - The provisions of the Noise Regulations will be enforced by means of inspections carried out by Surveyors/Inspectors from the Maritime and Coastguard Agency. No additional cost for MCA is envisaged as a result of this.

Sanctions - The Noise Regulations contain criminal sanctions for non-compliance as the measures being introduced are intended to improve the health and safety of workers on board UK ships and fishing vessels. No additional cost for MCA is envisaged as a result of this.

Monitoring - Compliance with the Noise Regulations will be considered as part of the overall inspection regime for both UK and non-UK ships. No additional cost for MCA is envisaged as a result of inspection under these regulations. The Noise Regulations provide that any contravention of relevant provisions shall be an offence, punishable on summary conviction by penalties on summary conviction of fines ranging from level 3 on the standard scale up to the statutory maximum. For certain more serious offences provision is also made for penalties on conviction on indictment of imprisonment for a term not exceeding two years or a fine or both.

9. IMPLEMENTATION AND DELIVERY PLAN

As the proposals are intended to implement the provisions of an EC Directive, there is virtually no scope for flexibility in the method of implementation. It is a requirement that all provisions are fully implemented in UK legislation and this is what we are proposing to do. However in doing so we have, in accordance with government policy, gone no further than the minimum necessary to implement the Directive (i.e. there is no “gold-plating”).

The Noise Regulations themselves implement the Directive, but additionally a detailed Marine Guidance Note has been prepared which will be available free of charge and will provide detailed guidance on the requirements of the regulations and how they can be met.

10. POST-IMPLEMENTATION REVIEW

As these proposals implement EC Directives the use of “sunset clauses” is not appropriate as the Noise Regulations will need to remain in force until such time as the Directives are revoked or amended by the EC.

It is not intended to carry out a review after a set period of time as the Noise Regulations simply build on the general provisions contained in the Framework directive, which was implemented by the General Duties Regulations, so industry should already be considering noise as part of the general risk assessment required by those regulations. Instead it is proposed to monitor compliance to see if any problems arise which need to be resolved by amending the regulations, or associated guidance, to make matters clearer to those covered by the Directive provisions.

11. SUMMARY AND RECOMMENDATION

The proposed Merchant Shipping and Fishing Vessel (Control of Noise at Work) Regulations 2007 are intended to implement for the maritime sector Council Directive 2003/10/EC which introduces health and safety measures intended to protect workers from risks arising from noise. These regulations complement similar regulations already made by the Health and

Safety Executive for land based workers and are necessary to complete the United Kingdom's implementation of these two Directives. It is therefore recommended that both sets of regulations be made as drafted.

12. DECLARATION

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed Jim Fitzpatrick.

Date 25th October 2007.

Minister's name,

Title,

Department

Contact point:

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**RESPONSES TO MCA CONSULTATION ON DRAFT MERCHANT SHIPPING AND FISHING VESSEL
(CONTROL OF NOISE AT WORK) REGULATIONS**

RESPONSES RECEIVED TO CONSULTATION ON PROPOSED REGULATIONS TO IMPLEMENT EC NOISE DIRECTIVE

CONSULTEE	CONSULTEE COMMENTS	MCA RESPONSE
British Marine Federation	Have no comment to make	No comment required
Germanischer Lloyd	<p><u>Draft regulations</u></p> <p>Chapter 4 “Exposure limit values and exposure action values”: <i>(now regulation 5)</i></p> <p>A reference to the standard ISO 1999:1990 should be made in this chapter in addition to the reference in chapter 2 “Interpretation”.</p> <p>A further reference to the IMO-Resolution A. 468 (XII) should be made.</p> <p><u>Draft Marine Guidance Note</u></p> <p>“Hearing Protection” (8.), “Worker Information and Training (11.) and “Annex 1” (> Methods of hearing protection):</p> <p>It might be useful to give some advices about the actual insertion losses of different kinds of ear protectors. An example can be find in the IMO-Resolution A. 468 (XII), Chapter 7.</p>	<p>The comment, that other measures, e.g. ISO 1999:1990 and IMO -Resolution A.468(XII) should be referred to in the regulations, is noted. However the purpose of these Regulations is to implement Directive 2003/10/EC which does not refer to ISO 1999:1990 and IMO -Resolution A.468(XII). Inclusion of them in the Regulations is not therefore appropriate.</p> <p>These points, in particular the point about the wearing of glasses, will be considered for inclusion in the Marine Guidance Note.</p>

	<p>An additional advice in this concern should be made that the attenuation level of ear muffs is reduce in case of the worker is wearing glasses.</p> <p><u>“Annex 1 / Notes A”:</u></p> <p>The given examples for typical noise levels does mainly cover working areas in the engine room. It might be useful to give some more examples for typical noisy maintaining work like removing rust etc.</p> <p>Further some examples about peak sound pressure levels should be given too considering the given limit values.</p> <p>The list of the maximum noise levels in different areas does not include the limit values for workshops (85 dB(A)).</p>	<p>A useful comment. Will seek to cover in the Marine Guidance Note subject to the availability of appropriate noise level data relating to maintenance work. However such data could not be obtained in time.</p> <p>Another useful comment. Will seek to cover in the Marine Guidance Note subject to the availability of appropriate noise level data.</p> <p>Comment noted. Will seek to include in the Marine Guidance Note</p>
<p>Chamber of Shipping</p>	<p><u>Regulation 6(2) (now regulation 7(2))</u></p> <p>This states that, if a risk assessment reveals that the upper exposure action values are exceeded, the employer is required to introduce a programme of technical and organisational measures to reduce workers’ exposure to noise and that such measures should not include the provision of personal hearing protectors. We understand that the purpose of this wording is to indicate that operators should take account of the full established hierarchy of control of health and safety risks. However, the wording used does not make this clear.</p> <p>The use of the words “technical and organisational” is</p>	<p>Point noted and clarified in regulations.</p> <p>Point noted and clarified in regulations.</p>

inconsistent with the directive, which refers to “technical and/or organisational” measures. We would like the Directive’s wording used in the Regulation.

Regulation 9 (now regulation 8)

The wording used appears to give seafarers the right to require their employers to provide specific protection. Whilst different types of hearing protection are appropriate for different areas on ships, normal practice is for seafarers to choose their ear protectors from a range supplied by the employer. The wording should be amended to reflect this.

Regulation 10(2)

This Regulation contains a reference to “preventative audiometric testing”. However, such testing is not preventative in any way.

Regulations 10(3) and (4)

We would like the word “damage” to be replaced by “impairment” in these Regulations and, where it occurs, in the MGN.

Regulation 10(6)(c)

This requires employers to provide the Secretary of State with copies of seafarers’ health records. We are concerned that this would raise confidentiality issues. If it is

The wording used comes directly from Article 9 of the Directive.

Wording used is taken directly from the Directive, in this case Article 10.2.

The use of the word “damage” in regulations 11(3) and (4) and the MGN comes directly from Article 10(4) of the Directive and is used for that reason.

This provision comes from Article 10.3 of the Convention and accords with full implementation of the Directive. However it is open to the Secretary of State as “Competent Authority”

<p>necessary to retain this statement, we would like appropriate guidance to be provided on how it should operate in practice.</p> <p><u>Regulation 10(7)</u></p> <p>This places a duty on seafarers to present themselves for health surveillance whenever their employer required and funded it, but that the Regulations contained no penalty for non-compliance by a seafarer. (The same issue occurs in Regulation 10.7 of the Noise Regulations.) Under the directive, workers have the right to health surveillance, hence this is an example of gold-plating and should be brought into line with the Directive.</p> <p><u>MGN</u></p> <p>The draft Marine Guidance Note (MGN) contains no reference to the fact that the exposure limit value will not apply to ships until 2011. The Chamber fought hard to secure this derogation when the Directive was under development and it is important that advantage is taken of it.</p> <p><u>MGN Annex 3</u></p> <p>It would be useful if this Annex were to include a worked example of the mathematical formula for measuring noise contained within it.</p> <p><u>Additional comment</u></p>	<p>responsible for the health and safety of workers on vessels to request such information as he considers appropriate when he considers it appropriate to do so and any request would clearly need to respect medical confidentiality</p> <p>Regulations amended to remove requirement for seafarers to present themselves following advice from lawyers.</p> <p>Comment noted. Reference to this derogation now included in the MGN it would be the intention to also make clear that this 5 year period is included to give employers time to take appropriate measures to meet the requirements of the regulations and not a means for delaying compliance where such compliance can be achieved earlier than 2011.</p> <p>Comment noted but not practical to include.</p>
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	<p>The new Regulations and accompanying guidance arguably supersede the existing Code of Practice for Noise Levels on Ships, which is itself based on IMO Assembly Resolution A.468. Whilst the limits in A.468 are not mandatory, they differ from those in the Directive. We suggest that, if the Code is to continue to be used, it should be subject to a review to ensure that it is not in conflict with the directive.</p> <p>The Chamber believes that the UK should make use of the derogation permitted by the directive until 2008 in respect of entertainers on board ship.</p>	<p>Given that other respondees have suggested retention of the Code further consideration will be given to its retention. If it is to be retained then it will, as indicated, require review.</p> <p>Comment noted. This derogation does require existing levels of protection to be maintained.</p>
<p>UK Maritime Pilots Association</p>	<p>Would like to see Pilot boats mentioned. Considering the fact that pilot boats transit in the most atrocious weather conditions 365 days a year, noise and vibration is a serious consideration.</p> <p>Derogation is just another result of commercial operators lobbying. Noise and vibration has been discussed for decades.</p> <p>The Code of Practice for noise levels on ships, to include pilot boats, should be updated. Not much point getting to this stage with new regulations and failing to update the</p>	<p>Both sets of regulations apply in full to Pilot Boats as they are not considered to constitute Public Service Vessels for the purposes of the regulations. Revised regulations now make this clearer. Exemptions may, in certain very limited circumstances, be granted as provided for in the Regulations but only when it is shown that it is not physically possible to comply with the specific provisions for which an exemption is permitted by the Directives.</p> <p>As the derogations are contained in the Directives they can be utilised in appropriate cases. Any exemptions will not automatically be extended and it will be for companies applying for a new exemption to make clear why, during the period of the previous exemption, it has not been possible to introduce arrangements to meet the requirements of the regulations.</p> <p>A decision on whether or not to retain and revise the Code of Practice for Noise Levels on Ships will be taken in the light of comments received following the consultation exercise.</p>

	appropriate Code of Practice.	
Bureau Veritas	<p>In general, we have no comment on the actual regulations as these are relatively formal requirements which cannot be amended. Our main comments thus refer to the Marine Guidance Notes (MGN's) which are as follows:</p> <p>MGN (Noise) (M+F) Page 4, Section 18.</p> <p>It is considered that the guidance in this section is extremely limited. Even in simple terms, the guidance document could make reference to the use of spreadsheet based models which combine operator work patterns with measured area noise levels to yield information on operator noise exposure levels. This type of approach would enable those operators who are at greatest risk to be identified and to demonstrate which machinery areas are dominant in creating this risk. This is considered imperative if noise reduction measures are under consideration as they should be targeted, as far as practicable, on those areas which will yield the greatest reduction in operator noise exposure levels - rather than (necessarily) those areas where noise levels are highest. This approach would also provide guidance on those operators who would most benefit from being fitted with noise dosimeters to gain an independent measure of daily noise exposure levels for critical operators.</p> <p>MCA Covering Letter</p> <p>In connection with the specific questions raised in the</p>	<p>A useful comment. Will seek to incorporate reference to use of spreadsheet based models in the MGN.</p> <p>Comment noted. Although not made clear in the consultation</p>

	<p>covering letter from the MCA, only the last point is commented upon. The question raised is whether the 1990 Code of Practice for Noise Levels in Ships is adequate or whether further noise guidance is required. It is believed that this document is rather dated as it makes no reference to noise exposure management systems (whereby mean spatial averages in each noisy area is combined with average operator exposure times to give an indication of daily personnel noise exposure [as discussed above]) and makes no reference the noise dosimetry systems (which can be used to check out the noise exposure predictions). Also, whilst there are statements on the need for operators to wear hearing protection in areas having noise levels over 85 dB(A), there is no indication of the requirement to make such protectors available to operators when the noise level is above the lower action level i.e. 80 dB(A). The same comment applies to training, which should be triggered at the lower exposure action value i.e. 80 dB(A). In addition, in terms of instrumentation, this document simply refers to use of a slow averaging time (rather than referring to the use of L(subscript: Aeq) values as required under the current "Noise at Work Regulations" and the impending "Control of Noise at Work Regulations"); and in terms of impulsive noise, reference is made to measurement of peak levels rather than C weighted peak levels as required under the new regulations. The current Code of Practice is therefore considered to be quite dated and it is questioned as to why this document is not scheduled for an update to bring it into line with the impending regulations.</p>	<p>letter, it was the intention to establish whether or not it was worth retaining and updating the Code of Practice, or whether it could just be replaced by the Noise MGN. A decision on this will be taken once all comments received have been considered.</p>
<p>NUMAST</p>	<p>General Comments</p> <p>It is noted that Council Directive 89/391/EEC (the</p>	<p>Comments made are accepted and will be covered in the final</p>

“Framework Directive”) introduced general measures to encourage improvements in the safety and health of workers’ at work and was implemented by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (as amended) (the “General Duties” Regulations). Both Directives, namely, 2002/44/EC and 2003/10/EC are “daughter” Directives that introduce specific minimum requirements relating to minimum safety and health requirements for workers’ likely to be exposed to vibration and noise at work. It is noted that there is no current legislation covering the provisions of these Directives.

It is noted that regulations to implement these Directives for land-based workers’ have already been introduced by the Health and Safety Executive (HSE) and these new maritime regulations will complete United Kingdom (UK) implementation by extending the provisions of these Directives to workers’ in the maritime sector. It is disappointing that it has taken such time for the Maritime and Coastguard Agency (MCA) to give effect to these Directives so as to ensure that workers’ in the maritime sector receive the same protection as workers’ ashore.

It is disappointing that the MCA are defensive in the arguments for introduction in stating, “There are risks to the UK Government in not implementing the Directive as failure to do so can result in infraction proceedings by the Commission for non-implementation. In addition, under the Francovic Principal the failure by the UK to implement individual rights and obligations could render the Government liable to pay compensation to all those affected by such failure.

version of the RIA.

It is respectfully pointed out that these are essential safety and health measures to protect workers' which have been accepted by other sectors of industry.

In addition to the implementation of these Directives, it is essential to ensure that the MCA have adequate resources in order to ensure an effective policing and so protect the safety and health of workers' on UK registered vessels.

Specific Comments

Draft Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2005

NUMAST would like to see no dilution of these proposed regulations, given that the MCA have stated, "...we have sought to implement them to the minimum necessary for compliance....".

Referring to Regulation 1 (a) as permitted under the Directive, it is appropriate that in relation to noise arising from the provision of music and entertainment on ships, the regulation shall not apply until 15 February 2008. It is noted that this is in line with similar regulations introduced by the HSE and is intended to allow time for the drawing up of a Code of Conduct providing for practical guidelines for the implementation of the provisions of the Directive, with regard to music and entertainment sectors. It is important however that the same guidelines, as applicable

The Regulations as drafted are intended to fully implement the Directive. No attempt has been made to dilute the requirements of the Directive but equally there has been no gold plating by the introduction of measures not contained in the Directive

Agreed. Will be liaising with HSE to see whether it will be possible to produce a single Code of Practice to cover the music and entertainment sectors both at sea and on land.

ashore, to places of entertainment are applied to merchant vessels.

Referring to Regulation 3 (1) (**now regulation 4(1)**) – While accepting the possibility of increased exposure to noise, when a vessel is engaged in search and rescue, it is totally unacceptable to exempt the activity of workers on public service vessels and where the characteristics of that activity inevitably conflict with the provisions of the regulations. All workers, regardless of their employment, deserve protection as required by the Directive; it is however noted that in the case of sea and air transport, given the current state of the art, it is not possible to comply in all circumstances with the exposure limits for whole body vibration. However, provision should therefore be made for duly justified exemptions in rare cases only. It is expected that the number of cases will be few and exceptional.

This appears to be a misunderstanding. The Regulations do not provide an exemption for public service vessels or vessels engaged in search and rescue. They simply allow for temporary derogation to the limited extent necessary to enable public service vessels to carry out their specialist activities - e.g. police launches pursuing another vessel - or other vessels to go to the assistance of persons, vessels or aircraft in distress. In all ordinary circumstances however the Regulations apply in full, and even on rare occasions where full application is not possible for the reasons stated, the health and safety of workers still has to be ensured so far as is reasonably practicable. The same provision is contained in the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations which implemented the “Framework Directive” (Directive 89/391/EEC). Article 2.2 of that Directive provided that it should not apply where characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflicted with it. In transposing this provision to the Noise and Vibrations regulations customs cutters and similar vessels are considered to be public service vessels. However ordinary vessels providing a service to the public such as ferries and similar vessels are not considered to be public service vessels for the purposes of these Regulations. It should be noted that the regulations are only disapplied insofar as a specific characteristic of the activity of a public service vessel conflicts with a provision of the regulations and then only in respect of that specific provision. All other requirements are required to be complied with. Therefore where a police or customs vessels

	<p>Referring to Regulation 6 (now regulation 7) – It is noted that reference is made to the term “reasonably practicable”. While such terminology is used in UK legislation, it is respectfully pointed out that the Directive requires in Article 5 (1) “...the risks arising from exposure to noise shall be eliminated at their source or reduced to a minimum”. NUMAST asserts that they should be either eliminated at source or reduced to a minimum.</p> <p>Referring to Regulation 7(now regulation 8) – It is important that this section be retained in its entirety and there is no dilution of the requirements with respect to hearing protection.</p> <p>Referring to Regulation 11(now regulation 13) – It is noted that reference is made to the term “reasonably practicable”, NUMAST asserts that this should read in accordance with the Directive “reduced to a minimum”.</p> <p>Referring to Regulation 13 “Penalties” (now regulation 14)– NUMAST believes that it is not appropriate for an individual worker to be subject to penalties equal to or greater than that of an employer. In particular, attention is</p>	<p>is, for example, pursuing someone it may exceed certain requirements of the noise or vibration Directives during that pursuit. However under normal use such as when on patrol full compliance with the Directive may well be possible. Revised regulations make this clearer.</p> <p>As stated the terminology “reasonably practicable” is widely used in UK health and safety legislation and indeed is used in both the Control of Vibration at Work Regulations 2005 and the Control of Noise at Work Regulations 2005 introduced by HSE to implement the vibration and noise Directives for land based workers. It is considered important to retain this wording.</p> <p>Agreed.</p> <p>As above in relation to Regulation 7.</p> <p>Having considered the comments the penalty concerned has been reduced to level 2.</p>
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	<p>draw to Section 13 (4) where reference is made to a fine not exceeding level 3 on the standard scale for an employer whereas in Section 13 (5) a worker is subject to a fine not exceeding level 4 on the standard scale.</p> <p>Draft Marine Guidance Note on Noise</p> <p>The content of the Draft Marine Guidance Note appears to be appropriate, given parties to which the MGN is addressed.</p> <p>It is noted that the draft MGN on ‘Noise’ includes information from the Code of Practice for noise levels on ships published in 1990. While the information provided in the MGN is acceptable, NUMAST urges that the Code of Practice for noise levels on ships be updated.</p> <p>Draft Regulatory Impact Assessment (RIA)</p> <p>Referring to Section 2 – It is noted that the HSE have already implemented regulations for land-based industry and it is somewhat disappointing that the MCA failed to identify the benefits to seafarers’ safety and health.</p> <p>Referring to Section 3 – It is disappointing that the MCA single out “The Chamber of Shipping” but make no reference to the Maritime Unions.</p> <p>Referring to Section 11 – It is disappointing that the MCA use the argument of avoidance of compensation by Government for compliance rather than, the benefits to the safety and health of workers and as the Directive states,</p>	<p>No comment required</p> <p>A decision on whether or not to retain and/or revise the Code will be taken in the light of comments received from respondees.</p> <p>The RIA will be amended to cover the benefits to seafarers’ safety and health.</p> <p>Reference to the Maritime Unions was omitted in error and will be rectified.</p> <p>Again this will be amended accordingly.</p>
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	<p>“...constitutes a practical step towards creating the social dimension of the internal market”.</p>	
<p>FURTHER NUMAST COMMENTS</p>	<p style="text-align: center;">General Comments</p> <p>NUMAST Response – NUMAST accepts the comments made by the MCA.</p> <p style="text-align: center;">Specific Comments</p> <p>Draft Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2005</p> <p>NUMAST Response, Regulation 3 (1) (now regulation 4(1)) – I thank you for your explanation which was understood. Further clarification is required with respect to the status of ferries that are owned or in receipt of subsidies to provide a “public service”. Furthermore, clarification is required with respect to the status of vessels owned by the National Environmental Research Council and those of the Royal Fleet Auxiliary.</p> <p>NUMAST Response, Regulation 12 “Penalties” (now regulation 13) – Agree revised level 2 penalty.</p>	<p>No comment required</p> <p>MCA would not consider ferries to be “public service vessels” for the purposes of the Directive. Similarly we would consider both RFA and NERC vessels as coming fully under the Directive, except perhaps in the case of the former when operating in war conditions. This has now been dealt with in the revised Regulations.</p>
<p>MINISTRY OF DEFENCE</p>	<p>The wording of the MCA noise and vibration regulations should be identical to those introduced by the Health and Safety Executive (HSE), except where keeping the same wording would either not be meaningful in the context of Merchant Shipping or give rise to ambiguities. This would</p>	<p>MCA regulations do so far as possible follow HSE regulations. We are however behind HSE in implementing these Directives and the latest guidance on drafting regulations to implement EC Directives requires that the wording used in the Directives should wherever possible be followed in the</p>

help us in the MOD to implement the noise and vibration policies consistently across the breadth of our activities. More importantly, it would ensure that policy formulation in government, law enactment and law enforcement are joined-up.

For example:

Wherever possible, all terms (e.g. health surveillance) should be defined as per the noise/vibration regulations introduced by HSE.

Draft MCA Noise Regulation 7(1) (**now regulation 8**) states: *'Without prejudice to the provisions in Regulation 6, (now regulation 7) an employer shall make personal hearing protectors available to any worker who is or is likely to be exposed to noise above a lower exposure action value.'* However, in the HSE introduced regulations it states: *'Without prejudice to the provisions in Regulation 6, an employer who carries out work which is likely to expose any employees to noise at or above a lower exposure action value shall make personal hearing protectors available upon request to any employee who is so exposed.*

Exemptions - There is no maximum period of 4 years in the HSE introduced regulations. (No justification appears to be given for the 4 years proposed by the MCA.)

regulations. This has resulted in some differences between the HSE and MCA regulations. Other differences arise from the fact that HSE regulations primarily cover land based industry whereas MCA regulations relate to merchant shipping and fishing vessels as well as yachts and small vessels with paid crew. Finally it should be noted that when implementing EC Directives, HSE in drafting their regulations, can introduce requirements additional to those contained in the Directive, whereas MCA is only able to apply Directive requirements to avoid disadvantaging UK shipping.

In drafting the Regulations applicable to the maritime sector, lawyers decide which terms require definition in the maritime context and generally base those definitions on the requirements of the Directives.

Whilst noting this comment, Article 6.1(a) of the Noise Directive states that *"Where noise exposure exceeds the lower exposure action values, the employer shall make individual hearing protectors available to workers".* The MCA regulations are therefore directly in accordance with the Directive

All exemptions issued by MCA are time limited. In addition, whilst the HSE regulations do not include a maximum period of 4 years, Article 11.2 of the Noise Directive does require

We do not understand what the material difference in Noise Regulation 10(2) between ‘...shall have his hearing examined...’ and ‘preventative audiometric testing’ is. Moreover, Noise Regulation 10 related to health surveillance states that a doctor¹ or a suitably qualified person under the supervision of a doctor will conduct health surveillance. In our opinion health surveillance should be conducted by a ‘competent person’ and if hearing damage is suspected or identified the employee should be referred to a doctor who is competent in the care and treatment of hearing damage. This issue would be further clarified if the word ‘supervision’ was defined. Supervision should not mean a doctor must be present while health surveillance is being carried out. The wording should be common across both the noise and vibration regulations.

Guidance is required on how to interpret ‘... increased health surveillance to a level considered appropriate...’ in the Vibration Regulation 10(4)(c) and Noise Regulation 11(2)(b) (now Regulation 12(2)(b)).

derogations to be reviewed at 4 yearly intervals and withdrawn as soon as the justifying circumstances no longer obtain. Similar provisions are contained in Article 10.3 of the Vibration Directive. The 4 year limit in MCA’s draft Noise and Vibration Regulations is therefore fully in accordance with the Directives. Incidentally the HSE Regulations do provide that exemptions may be time limited.

The words ‘...shall have his hearing examined...’ and ‘preventative audiometric testing’ in regulation 10(2) both come directly from Article 10.2 of the Noise Directive. It is possible that used in the context of Article 10.2 they might well mean the same thing. Will see if it is possible to provide further clarification on this point.

The provision in Regulation 10(2)(a) that a worker exposed to noise above the upper exposure action values, shall have his hearing examined by a doctor or by a suitably qualified person under the supervision of a doctor is taken straight from the Directive and is thus not open to change in the way proposed. Regulation 10(2)(a) was however slightly incorrect in its transposition of the wording of the Directive and should actually have read:-

“where a worker is exposed to noise above the upper exposure action values, such worker shall be entitled to have his hearing examined by a doctor or by a suitably qualified person under the supervision of a doctor“

The level to which health surveillance should be increased will be specified in any exemption issued by MCA.

<p>The draft regulations refer to ‘contracts of employment’, ‘employers’ and ‘workers’. However, it is unclear whether those persons who are not in a traditional employee/employer relationship (eg casual workers, agency staff) will be covered by the provisions of the Directive, assuming this is the intention.</p> <p>With respect to exemptions, I understand that because the regulations only refer to the ‘Secretary of State’, in law, exemptions could be granted by any Secretary of State (including the Secretary of State for Defence). That said we would like to see, as a matter of policy for defence related matters, the Secretary of State for Defence mentioned explicitly in the regulations as having the authority to grant exemptions. This would be consistent with the noise and vibration regulations introduced by the HSE, and we would follow the same process for seeking exemptions on defence matters as we would when seeking exemptions under the regulations introduced by the HSE. The process, for each exemption, would be as follows. An exemption case would be compiled each time an exemption was thought necessary. It would be independently scrutinised by suitably qualified personnel in the MOD before being forwarded to Secretary of State for Defence for his consideration. Where a certificate is signed an information copy would be sent to the MCA.</p> <p>There are a number of typographical/editorial errors (eg in Annex G at para 11 some of the bullets appear to have been lifted from the vibration draft, and the reference to ‘safe</p>	<p>The Directives state that they introduce minimum health and safety requirements regarding the exposure of workers to physical agents - noise and vibration. The drafting of the regulations is intended to apply the provisions of the Directives to all workers and it is our understanding that “casual workers” and “agency staff” are workers as they will be employed by someone under some form of contract. The only possible exception from the provision of these regulations would be self employed persons.</p> <p>Discussions undertaken and now resolved by inclusion of limited derogation for vessels engaged in matters relating to national security. .</p> <p>Noted and have rectified .</p>
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	<p><i>working practices to minimise exposure to mechanical vibration</i>' has been included in this guidance on noise in error), I assume these will be corrected in the final version.</p>	
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