

Protection of the Environment Operations (Noise Control) Regulation 2008

New provisions affecting various articles

This information sheet summarises changes to the way noise from miscellaneous articles will be regulated under the Protection of the Environment Operations (Noise Control) Regulation 2008 (the 'Regulation'). The new Regulation generally commences on 1 March 2008, except where otherwise specified.

The Department of Environment and Climate Change (DECC) received a total of 227 submissions on the draft Regulation, the vast majority of which supported the proposed changes. However some additional amendments have been made as a result of the comments received.

For more information on the changes, visit DECC's website at www.environment.nsw.gov.au/noise/index.htm

Summary of new provisions

Statutory warnings (clauses 50, 51 and 52)

For noise related to miscellaneous articles, such as power tools, swimming pool pumps, spa pumps, musical instruments, electrically amplified sound equipment and air conditioners, statutory warnings are required to be given to those responsible for the noise. An offence occurs if the noise re-occurs within 28 days of the warning being given. The former Regulation allowed council and police officers and members of the public to issue these warnings. In practice, however, regulators tended not to rely on statutory warnings by members of the public as they might not have been made in a clear and understandable manner. As a result, the new Regulation removes the ability for members of the public to issue statutory warnings.

A total of 89% of the 47 submissions that commented on this issue during the public consultation supported this change.

Musical instruments and sound systems (clause 51)

The former Regulation restricted the use of musical instruments and electrically amplified sound equipment between midnight and 8 am every day. However consultation before the Regulation was drafted indicated that 94% of councils and 85% of the community supported earlier finishing times for noisy activities. As a result the new Regulation changes the restricted times to:

- 10 pm to 8 am Sunday to Thursday
- 12 midnight to 8 am on Friday, Saturday and any other night followed by a public holiday.

There is no restriction on the time these articles may be used, provided the volume is kept low enough not to affect neighbours. An offence only occurs if noise from the article is heard in a habitable room of another residence during restricted hours and after a warning has been given. A 'habitable room' is defined in the Regulation as any room other than a garage, storage area, bathroom, laundry, toilet or pantry. The new provision commences on 1 March 2008. The definition of 'electrically amplified sound equipment' has been modified in the new Regulation to make it clear that it includes televisions and home entertainment systems.

A total of 88% of the 88 submissions that commented on this issue during the public consultation supported the change.

Heat pump water heaters (clause 52)

Heat pumps are increasingly being added to domestic water storage heaters as an efficient way to supplement water heating. Often water storage heater tanks are located close to the bedrooms of neighbouring residences and they may activate at night. Heat pumps are similar devices to air conditioners and the new Regulation controls them in a similar way: by restricting the times they can be used when they can be heard within a habitable room of another residence.

The new Regulation restricts the use of noisy heat pumps between:

- 10 pm and 8 am Saturday, Sunday and public holidays
- 10 pm and 7 am on any other day.

The operation of heat pumps within the restricted hours does not constitute an automatic offence. An offence only occurs if a heat pump is heard in a habitable room of another residence during restricted hours and after a warning has been given. The aim of the Regulation is to minimise impacts on neighbours where heat pumps are inappropriately sited or operated. The new provision takes effect from 1 September 2008 to allow the community time to be informed about the new requirements and make any necessary adjustments to existing systems.

Of the 51 submissions that commented on this issue during the public consultation, 92% supported the change.

Building intruder alarms (clause 53)

Penalties apply to the sounding of building intruder alarms beyond the permitted time limits of 10 minutes for alarms installed before 1 December 1997 and 5 minutes for those installed on or after this date. A tiered system of penalties applies with the penalty level linked to the time the alarm sounds beyond the permitted time. The former tiered penalty system introduced in 1997 did not reflect the typical duration of faulty alarm incidents nor the level of nuisance for those affected. The new Regulation reduces the time periods an alarm may sound before a higher penalty is incurred. The following table shows the penalties associated with the time periods in the former and new Regulation:

Penalty Notice (for individuals)	Time periods for which alarm sounds beyond the permitted time limit	
	Former time periods	New time periods
\$200	Up to 24 hours	Up to 4 hours
\$400	More than 24 hours and up to 48 hours	More than 4 hours and up to 8 hours
\$600	More than 48 hours	More than 8 hours

Fifty-one submissions commented on this issue during the public consultation with 92% supporting the change.

Unchanged provisions

Power tools and equipment, including leaf blowers and rainwater tank pumps

The times when restrictions apply to power tools and equipment have not been changed in the new Regulation. 'Power tools' include electric power tools and powered garden tools, such as lawn mowers and leaf blowers, while 'equipment' includes swimming pool and spa pumps.

The restricted times are:

- 8 pm to 8 am Sundays and public holidays
- 8 pm to 7 am on other days.

DECC would, however, like to clarify that, under the *Protection of the Environment Operations Act 1997*, council officers can take action against people using miscellaneous articles, such as power tools, **within** the permitted hours of use if the noise from the article is deemed to be 'offensive noise' (see definition below). Councils may issue, for example, a Prevention Notice, Noise Control Notice or Noise Abatement Direction. Individuals may also seek a Noise Abatement Order from the local court. The local court may direct a person to cease the emission of a noise if it is satisfied the noise is offensive.

Leaf blowers

Many articles, such as grass cutting machines, are currently subject to maximum noise limits and required to have a label noting the maximum noise level emitted by the article. DECC intends to explore the possibility of introducing a national noise labelling scheme. Leaf blowers are not currently subject to the noise labelling scheme, but DECC will seek to draw these devices into any national scheme so that they would be subject to a maximum noise level and labelling requirements.

A total of 93% of the 41 submissions that commented on leaf blowers during the public consultation sought additional controls on these devices.

Rainwater tank pumps

Some submissions suggested that noise from the use of rainwater tank pumps might also need to be controlled. DECC proposes to further investigate the need to regulate these devices and any unforeseen consequences for rural and urban communities over the next 12 months.

Definition of offensive noise

'Offensive noise' is defined in the *Protection of the Environment Operations Act 1997* as being noise:

(a) that, by reason of its level, nature, character or quality, or the time at which it is made or any other circumstances:

(i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or

(ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or

(b) that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in any other circumstances prescribed by the regulations.