

**2008 No. 422**

**HEALTH AND SAFETY**

**The Equipment and Protective Systems Intended for Use in  
Potentially Explosive Atmospheres (Amendment) Regulations  
(Northern Ireland) 2008**

*Made* - - - - *20th October 2008*

*Coming into operation* - *1st December 2008*

The Department of Enterprise, Trade and Investment(a), makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(b). The Department has been designated for the purposes of that section in relation to measures relating to equipment and protective systems intended for use in potentially explosives atmospheres(c) and measures relating to consumer protection(d).

**Citation and commencement**

1. These Regulations may be cited as the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations (Northern Ireland) 2008 and shall come into operation on 1st December 2008.

**Interpretation**

2.—(1) In these Regulations—

- (a) the “ATEX Directive” means Directive 94/9/EC of the European Parliament and the Council on the approximation of the laws of Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres(e); and
- (b) the “principal Regulations” means the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996(f).

(2) The Interpretation Act (Northern Ireland) 1954(g) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

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(a) Formerly the Department of Economic Development; *see* S.I. 1999/283 (N.I. 1), Article 3(5); that Department was formerly the Department of Manpower Services, *see* S.I. 1982/846 (N.I. 11), Article 3

(b) 1972 c. 68: the enabling powers conferred by section 2(2) were extended by section 1 of the European Economic Area Act 1993 (c. 51). Section 2(2) was further amended by section 27(1), and paragraphs 2 and 3 by section 27(2), of the Legislative and Regulatory Reform Act 2006 (c. 51)

(c) S.I. 1995/751

(d) S.I. 1993/2661, which superseded S.I. 1972/1811 in relation to specific areas of consumer protection

(e) O.J. No. L100, 19.4.94, p.1, as amended by corrigenda, O.J. No. L21, 26.1.2000, p.42 and O.J. No. L304, 5.12.2000, p.19

(f) S.R. 1996 No. 247, as amended by S.R. 1998 No. 77 and S.R. 1999 No. 125

(g) 1954 c. 33 (N.I.)

## Amendment of the principal Regulations

3.—(1) The principal Regulations shall be amended in accordance with paragraphs (2) to (16).

(2) In regulation 2 (Interpretation)—

(a) in paragraph (2)—

(i) in the definition of “harmonized standard” for “Council Directive No. 83/189/EEC of 28th March 1983”, substitute “Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998(a)”; and

(ii) in the definition of “responsible person”—

(aa) after the first occurrence of “on the market”, insert “or puts that equipment, protective system or device into service”; and

(bb) after the second occurrence of “on the market”, insert “or puts it into service”; and

(b) after paragraph (4), add the following paragraph—

“(5) For the purposes of these Regulations, equipment, protective systems or devices shall not be regarded as having been put into service where a person—

(a) being a manufacturer of equipment, protective systems or devices for his own use; or

(b) having imported equipment, protective systems or devices from a country or territory outside the Community for his own use,

puts that equipment, protective system or device into service otherwise than in the course of a business.”.

(3) In regulation 3(2) (Equipment, protective systems, devices and components)—

(a) in sub-paragraph (a), for “or the processing of material” substitute “and the processing of material, as the case may be,”; and

(b) for sub-paragraph (b) substitute—

“(b) “protective systems” means devices other than components of equipment which are intended to halt incipient explosions immediately or limit the effective range of an explosion or both, as the case may be, and which systems are separately placed on the market for use as autonomous systems;”.

(4) In regulation 6(1) (General duty relating to the placing on the market of equipment, protective systems or devices by a responsible person), after “place on the market”, insert “or put into service”.

(5) In regulation 8(2)(b) (General duty relating to the placing on the market of components by a responsible person), for “certificate” substitute “written attestation”.

(6) In regulation 9 (Exceptions to placing on the market in respect of certain equipment, protective systems, devices and components), for “device” where it first appears substitute “or device shall not be regarded as being placed on the market and put into service”.

(7) For regulation 11 (Notified bodies), substitute—

“**11.** For the purposes of these Regulations, a notified body is a body which has been appointed to carry out one or more of the conformity assessment procedures specified in Article 8 of the ATEX Directive and referred to in regulation 10 and which has been—

(a) appointed as a notified body in Northern Ireland pursuant to regulation 12;

(b) appointed as a notified body in Great Britain;

(c) appointed by a member State other than the United Kingdom; or

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(a) O.J. No. L204, 21.7.98, p.37; Directive 98/34/EC has been amended by Directive 98/48/EC of the European Parliament and of the Council (O.J. No. L217, 5.8.98, p.18)

- (d) recognised for the purpose of carrying out the relevant procedure by inclusion in a mutual recognition agreement, relating to the ATEX Directive, or a similar agreement (including a Protocol to the European Agreement, or other Agreement, on Conformity Assessment and Acceptance of Industrial Products) which has been concluded between the European Community and a State other than a member State,

and in the case of (a), (b) and (c) has been notified by the member State concerned to the Commission and the other member States pursuant to Article 9(1) of the ATEX Directive.”.

(8) In regulation 14(1)(b) (Conditions for equipment, protective systems, devices and components being taken to comply with the provisions of the ATEX Directive), for “certificate” substitute “written attestation”.

(9) For regulation 16 (Offences and penalties) substitute—

“16. Any person who contravenes regulation 6, 7 or 8 shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both; and
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.”.

(10) In Schedule 1 (The CE marking and other inscriptions)—

- (a) in paragraph 5, for “equipment and protective systems” substitute “equipment, protective systems and devices”; and
- (b) in paragraph 9, for both occurrences of “equipment or protective systems” substitute “equipment, protective systems or devices”.

(11) In Schedule 2 (Essential health and safety requirements)(a)—

- (a) in requirement 1.1.3, for “impact” substitute “mechanical”;
- (b) in requirement 1.2.3—
  - (i) for “developing” substitute “releases of”; and
  - (ii) for “escapes” substitute “releases”;
- (c) in requirement 1.2.7(d), for “shall” substitute “do”;
- (d) in requirement 1.5.1—
  - (i) after “measurement or control devices” insert “or both measurement and control devices”; and
  - (ii) for “For electrical circuits the” substitute “The”;
- (e) in the heading to requirement 2.1.1, for “*hazes*” substitute “*mists*”.

(12) In Schedule 3 (Criteria determining the classification of equipment-groups into categories)(b), paragraph 2(b) after “occur” insert “occasionally”.

(13) In Schedule 5 (Module: EC type-examination)(c), paragraph 5, for “relevant” substitute “significant”.

(14) In Schedule 7 (Module: Product verification)(d), paragraph 4.1, for “equipment” where it last occurs substitute “equivalent”.

(15) In Schedule 8 (Module: Conformity to type)(e), paragraph 2, omit “or protective systems”.

(16) In Schedule 9 (Module: Product quality assurance)(f), paragraph 3—

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- (a) Annex II to the ATEX Directive
  - (b) Annex I to the ATEX Directive
  - (c) Annex III to the ATEX Directive
  - (d) Annex V to the ATEX Directive
  - (e) Annex VI to the ATEX Directive
  - (f) Annex VII to the ATEX Directive

- (a) in paragraph 3.1, omit “and protective systems”; and
- (b) in paragraph 3.2, for “instruments” substitute “instructions”.

**Consequential amendment of the Provision and Use of Work Equipment Regulations (Northern Ireland) 1999**

4. In the second column of Schedule 2 to the Provision and Use of Work Equipment Regulations (Northern Ireland) 1999(a), relating to the entry for the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996, for the reference “S.R. 1996 No. 247, amended by S.R. 1999 No. 125” substitute “S.R. 1996 No. 247, amended by S.R. 1998 No. 77, S.R. 1999 No. 125 and S.R. 2008 No. 422”.

**Revocations**

5. The Electrical Equipment for Explosive Atmospheres (Certification) (Amendment) Regulations (Northern Ireland) 1999(b) and regulation 3 of the Electrical Equipment for Explosive Atmospheres (Certification) (Amendment) Regulations (Northern Ireland) 2000(c) are revoked.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 20th October 2008.



*M. Bohill*

A senior officer of the Department of Enterprise, Trade and Investment

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(a) S.R. 1999 No. 305 as amended by S.I. 1999/2001, S.R. 2000 No. 87, S.I. 2001/1701, S.R. 2003 No. 423, S.I. 2004/129, S.R. 2005 No. 279, S.R. 2005 No. 397, S.R. 2006 No. 1, S.R. 2007 No. 31 and S.R. 2007 No. 291: revoked in part by S.R. 2007 No. 291

(b) S.R. 1999 No. 124

(c) S.R. 2000 No. 85

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations amend the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996 (S.R. 1996 No. 247, as amended by S.R. 1998 No. 77 and S.R. 1999 No. 125) (“the principal Regulations”), which implemented Directive 94/9/EC of the European Parliament and the Council on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres (the ATEX Directive), to give effect to corrigenda to the ATEX Directive (O.J. No. L21, 26.1.2000, p.42 and O.J. No. L304, 5.12.2000, p.19) which makes typographical changes (*regulation 3(3), (5), (8) and (10) to (16)*).

2. These Regulations also amend the principal Regulations by—

- (a) amending the definition of “harmonised standard” to reflect the consolidation of Council Directive 83/189/EEC (as amended) in Directive 98/34/EC (O.J. No. L204, 21.7.98, p.37) (*regulation 3(2)(a)*);
- (b) amending the definition of “responsible person” to include, in certain circumstances, a person who puts equipment, protective systems, devices or components into service (*regulation 3(2)(b)*);
- (c) making provision that the activity of putting into service shall not be regarded as having taken place in certain circumstances (*regulation 3(2)(c)*);
- (d) amending regulation 6 to provide a general duty on responsible persons not to put equipment, protective systems or devices into service unless certain requirements specified in the principal Regulations have been complied with (*regulation 3(4)*);
- (e) amending regulation 9 to ensure extension to the activity of putting equipment and systems into service (*regulation 3(6)*);
- (f) substituting the wording for regulation 11 to reflect the recognition of notified bodies under various agreements (*regulation 3(7)*); and
- (g) increasing the range of penalties available (in regulation 16) for offences under the principal Regulations (*regulation 3(9)*).

3. These Regulations also make a consequential amendment (*regulation 4*) and revocations (*regulation 5*) to other legislation.

4. In Great Britain, the corresponding Regulations are the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations 2001 (S.I. 2001/3766) and the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations 2005 (S.I. 2005/830).

5. A regulatory impact assessment prepared by the Department of Enterprise, Trade and Investment in respect of these Regulations is held at the offices of the Health and Safety Executive for Northern Ireland at 83 Ladas Drive, Belfast BT6 9FR from where a copy may be obtained on request.

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