STATUTORY RULES OF NORTHERN IRELAND

2017 No. 90

HEALTH AND SAFETY

The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017

Made - - - -	*15th June 2017*
Coming into operation	*10th July 2017*

The Department for the Economy [F1] makes the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A [F2] of Schedule 2 to, the European Communities Act 1972 ("the 1972 Act") [F3].

The Department is designated [F4] for the purposes of section 2(2) of the 1972 Act in relation to measures relating to equipment and protective systems intended for use in potentially explosive atmospheres.

The Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Department that it is expedient for certain references to provisions of EU instruments to be construed as references to those provisions as amended from time to time.

F1 Formerly the Department of Enterprise, Trade and Investment; *see*2016 c. 5, **section 1(3)**; that Department was 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**

F2 Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51) and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7)

F3 1972 c. 68; the enabling powers conferred by section 2(2) were extended by virtue of section 1 of the European Economic Area Act 1993 (c. 51). Section 2(2) was further amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7)

F4 S.I. 1995/751

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 and shall come into operation on 10th July 2017 ("the commencement date").

Interpretation

2.—(1) In these Regulations—

"the 1978 Order" means the Health and Safety at Work (Northern Ireland) Order 1978 [F5];

"the 1994 Directive" means Directive 94/9/EC of the European Parliament and of the Council on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres [F6];

"the 1996 Regulations" means the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996 [F7];

"accreditation certificate" means a certificate, issued by the United Kingdom Accreditation Service [F8] or a national accreditation body in another Member State or Great Britain, attesting that a conformity assessment body meets the notified body requirements;

"ATEX Directive" means Directive 2014/34/EU of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres (recast) [F9];

"attestation of conformity" means a declaration of conformity required to be drawn up in accordance with regulation 7(3) (EU declaration of conformity and CE marking);

"authorised representative" means a person appointed in accordance with regulation 17(1);

"CE marking" means a marking which takes the form set out in Annex II to RAMS (as amended from time to time);

"competent national authority" means an authority having responsibility for enforcing the law of a Member State which implements the ATEX Directive;

"component" means any item essential to the safe functioning of equipment and protective systems but with no autonomous function;

"conformity assessment" means the process demonstrating whether the essential health and safety requirements relating to a product have been fulfilled;

"conformity assessment body" means a body that performs conformity assessment activities, including calibration, testing, certification and inspection;

"distributor" means any person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market;

"economic operator" means a manufacturer, authorised representative, importer or distributor;

"equipment" means machines, apparatus, fixed or mobile devices, control components and their instrumentation and detection or prevention systems which, separately or jointly, are intended for the generation, transfer, storage, measurement, control and conversion of energy or the processing of material or both and which are capable of causing an explosion through their own potential sources of ignition;

"equipment category" means the classification of equipment, within each equipment-group, specified in Annex I to the ATEX Directive (as amended from time to time), determining the requisite level of protection to be ensured;

"equipment-group I" means equipment intended for use in underground parts of mines, and in those parts of surface installations of such mines, liable to be endangered by firedamp or combustible dust or both, comprising equipment categories M 1 and M 2 as set out in Annex I to the ATEX Directive (as amended from time to time);

"equipment-group II" means equipment intended for use in other places liable to be endangered by explosive atmospheres, comprising equipment categories 1, 2 and 3 as set out in Annex I to the ATEX Directive (as amended from time to time);

"essential health and safety requirements" means the requirements set out in Schedule 1 (Essential health and safety requirements);

"EU declaration of conformity" means a declaration of conformity required to be drawn up in accordance with regulation 7(1)(a) (EU declaration of conformity and CE marking);

"European Commission" means the Commission of the European Union;

"the Executive" means the Health and Safety Executive for Northern Ireland;

"explosive atmosphere" means a mixture with air, under atmospheric conditions, of flammable substances in the form of gases, vapours, mists or dusts in which, after ignition has occurred, combustion spreads to the entire unburned mixture;

"harmonised standard" has the meaning set out in point 1(c) of Article 2 of Regulation (EU) 1025/2012 of the European Parliament and of the Council on European standardisation [F10] (as amended from time to time);

"importer" means any person who—

(a) is established within the EU; and

(b) places a product from a third country on the EU market;

"intended use" means the use of a product prescribed by the manufacturer by assigning the equipment to a particular equipment-group and category or by providing all the information which is required for the safe functioning of a protective system, device or component;

"make available on the market" means any supply of a product for distribution, consumption or use on the EU market in the course of a commercial activity, whether in return for payment or free of charge;

"manufacturer" means a person who—

(a) manufactures a product, or has a product designed or manufactured; and

(b) markets that product—

  (i) under that person's name or trade mark; or

  (ii) uses such product for that person's own purposes;

"market surveillance authority" has the meaning set out in regulation 51 (Designation of market surveillance authority);

"national accreditation body" has the meaning set out in point 11 of Article 2 of RAMS (as amended from time to time);

"notified body requirements" means the requirements set out in Schedule 2 (Notified body requirements);

"Official Journal" means the Official Journal of the European Union;

"place on the market" means make a product available on the EU market for the first time;

"potentially explosive atmosphere" means an atmosphere which could become explosive due to local and operational conditions;

"protective systems" means devices other than components of equipment which are intended to halt incipient explosions immediately or to limit the effective range of an explosion or both, and which are separately made available on the market for use as autonomous systems;

"putting into service" means the first use of a product by an end-user within the EU market, for the purposes for which it was intended;

"RAMS" means Regulation (EC) 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93[F11];

"recall" means taking any measure aimed at achieving the return of a product that has already been made available to the end-user;

"relevant conformity assessment procedure" means a conformity assessment procedure referred to in regulation 39 (Conformity assessment procedures);

"relevant economic operator" means, in relation to a product, an economic operator with obligations in respect of that product under Part 2;

"technical documentation" has the meaning given in regulation 6 (Technical documentation and conformity assessment);

"technical specification" means a document that prescribes technical requirements to be fulfilled by a product; and

"withdraw" when used in relation to a product, means taking any measure aimed at preventing a product in the supply chain from being made available on the market.

(2) In these Regulations, a reference to a product being "in conformity with Part 2" means that—

(a) the product is in conformity with the essential health and safety requirements; and

(b) each relevant economic operator has complied with the obligations imposed on them under Part 2 which shall be satisfied at or before the time at which they make the product available on the market.

(3) In these Regulations (except in Part 4 (Notification of conformity assessment bodies) and Schedules 2 (Notified body requirements) and 3 (Operational obligations of notified bodies)), "notified body" means—

(a) a notified body within the meaning set out in regulation 42 (Notified bodies); or

(b) a notified body under the laws of any other Member State which implement the ATEX Directive.

(4) In regulations 10(1) and 24(1) (Monitoring) and Schedule 1 (Essential health and safety requirements), "risk" means a risk which could arise from lawful and readily predictable human behaviour.

(5) In the other provisions of these Regulations, "risk" means a risk—

(a) which could arise from lawful and readily predictable human behaviour; and

(b) which may result in harm to any of the following interests—

(i) health and safety of persons, in particular workers;

(ii) domestic animals; or

(iii) property.

(6) In these Regulations, a reference to a Member State is to be read as a reference to an EEA State and references to the EU are to be read as references to the European Economic Area.

(7) The Interpretation Act (Northern Ireland) 1954 [F12] shall apply to these Regulations as it applies to an Act of the Assembly.

F5 S.I. 1978/1039 (N.I. 9)
F6 O.J. L 100, 19.4.1994, p. 1
F7 S.R. 1996 No. 247, amended by S.R. 1998 No. 77, S.R. 1999 No. 125 and S.R. 2008 No. 422
F8 a company limited by guarantee incorporated in England and Wales under number 03076190
F9 O.J. L 96, 29.3.2014, p. 309
F10 O.J. L 316, 14.11.2012, p.12
F11 O.J. L 218, 13.8.2008, p.30
F12 1954 c. 33 (N.I.), as amended by S.I. 1999/663, **Schedule 1 paragraph 9**

Scope

3.—(1) These Regulations apply to products which—

(a) fall within the meaning of "product" in paragraph (2); and

(b) are not excluded by paragraph (3).

(2) A "product" means—

(a) equipment and protective systems intended for use in potentially explosive atmospheres;

(b) safety devices, controlling devices and regulating devices intended for use outside potentially explosive atmospheres but required for or contributing to the safe functioning of equipment and protective systems with respect to the risks of explosion; and

(c) components intended to be incorporated into equipment and protective systems referred to in sub-paragraph (a).

(3) The following products are excluded from the definition in paragraph (2)—

(a) medical devices intended for use in a medical environment;

(b) equipment and protective systems where the explosion hazard results exclusively from the presence of explosive substances or unstable chemical substances;

(c) equipment intended for use in domestic and non-commercial environments where potentially explosive atmospheres may only rarely be created, solely as a result of the accidental leakage of fuel gas;

(d) personal protective equipment covered by Council Directive 89/686/EEC on the approximation of the laws of the Member States relating to personal protective equipment [F13];

(e) seagoing vessels and mobile offshore units together with equipment on board such vessels or units;

(f) means of transport (other than vehicles intended for use in a potentially explosive atmosphere), including vehicles and their trailers intended solely for transporting passengers by air or by road, rail or water networks and means of transport in so far as such means are designed for transporting goods by air, by public road or rail networks or by water;

(g) the equipment covered by Article 346(1)(b) of the Treaty on the Functioning of the European Union; and

(h) products which have been placed on the market before the commencement date.

F13 O.J. L 399, 30.12.1989, p. 18