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STATUTORY RULES OF NORTHERN IRELAND

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**1996 No. 247**

**Equipment and Protective Systems Intended  
for Use in Potentially Explosive Atmospheres  
Regulations (Northern Ireland) 1996**

**Part IV**

**Enforcement**

**Application of Schedule 13**

**15.**—(1) Subject to paragraph (2), Schedule 13 shall have effect for the purposes of providing for the enforcement of these Regulations and for matters incidental thereto.

(2) Except in the case of equipment, a protective system or device which, in the opinion of the Department, is not safe, where the Department has reasonable grounds for suspecting that the CE marking has not been correctly affixed to equipment, a protective system or device, as the case may be, it may give notice in writing to the responsible person who placed that equipment, protective system or device on the market and, subject to paragraph (3), action pursuant to Schedule 13 shall not be taken, and proceedings shall not be brought pursuant to regulation 16, in respect of that equipment, protective system or device, as the case may be, until such notice has been given and the person to whom it is given has failed to comply with its requirements.

(3) Notwithstanding the provisions of paragraph (2), for the purpose of ascertaining whether or not the CE marking has been correctly affixed, action may be taken pursuant to Article 22 of the Health and Safety at Work (Northern Ireland) Order 1978(1) as it is applied by Schedule 13.

(4) Notice which is given under paragraph (2) shall—

- (a) state that the Department suspects that the CE marking has not been correctly affixed to the equipment, protective system or device, as the case may be;
- (b) specify the respect in which it is so suspected and give particulars thereof;
- (c) require the person to whom the notice is given to—
  - (i) secure that any equipment, protective system or device, as the case may be, to which the notice relates conforms as regards the provisions concerning the correct affixation of the CE marking within such period as may be specified in the notice; or
  - (ii) provide evidence within that period, to the satisfaction of the Department, that the CE marking has been correctly affixed; and
- (d) warn that person that if the non-conformity continues after (or if satisfactory evidence has not been provided within) the period specified in the notice, further action may be taken under the Regulations in respect of that equipment, protective system or device, as the case may be, or any equipment, protective system or device of the same type placed on the market by that person.

(5) For the purposes of this regulation, the CE marking is correctly affixed to equipment, a protective system or device, as the case may be, if—

- (a) it has been affixed in accordance with regulation 6(2)(c); and
- (b) the appropriate conformity assessment procedure has been carried out in respect of that equipment, protective system or device in accordance with regulation 6(2)(b).

### **Offences and penalties**

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

- (a) to imprisonment for a term not exceeding 3 months; or
- (b) to a fine not exceeding level 5 on the standard scale,

or to both.

### **Defence of due diligence**

17.—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 16 it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided by paragraph (1) involves an allegation that the commission of the offence was due—

- (a) to the act or default of another; or
- (b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings, he has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

### **Liability of persons other than the principal offender**

18. Where the commission by any person of an offence under regulation 16 is due to the act or default of some other person in the course of any business of his, that other person may be proceeded against and punished of the offence by virtue of this regulation whether or not proceedings for the offence are taken against the first-mentioned person.

### **Amendment of the Electricity at Work Regulations (Northern Ireland) 1991**

**19.** In regulation 19(2) of the Electricity at Work Regulations (Northern Ireland) 1991<sup>(2)</sup> for sub-paragraph (d) there shall be substituted the following sub-paragraph—

“(d) equipment which has received a certificate of conformity or a certificate of inspection in accordance with Council Directive No.82/130/EEC<sup>(3)</sup> on the approximation of the laws of the Member States concerning electrical equipment for use in potentially explosive atmospheres in mines susceptible to firedamp, as adapted to technical progress by Commission Directives No. 88/35/EEC<sup>(4)</sup>, No. 91/269/EEC<sup>(5)</sup> and No. 94/44/EC<sup>(6)</sup>”.

### **Consequential amendment of the Provision and Use of Work Equipment Regulations (Northern Ireland) 1993**

**20.**—(1) In Schedule 1 to the Provision and Use of Work Equipment Regulations (Northern Ireland) 1993<sup>(7)</sup> after paragraph 22 there shall be added the following paragraph—

“**23.** European Parliament and Council Directive No. 94/9/EC on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres (O.J. No. L100, 19.4.94, p. 1).”.

(2) These Regulations shall have effect for the purposes of the enforcement of regulation 10 of the Provision and Use of Work Equipment Regulations (Northern Ireland) 1993 as if the addition of the reference to the ATEX Directive in Schedule 1, effected by paragraph (1), had been made by means of Regulations made under Article 17 of the Health and Safety at Work (Northern Ireland) Order 1978.

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(2) S.R. 1991 No. 13

(3) O.J. No. L59, 2.3.82, p. 10

(4) O.J. No. L20, 26.1.88, p. 28

(5) O.J. No. L134, 29.5.91, p. 51

(6) O.J. No. L248, 23.9.94, p. 22

(7) S.R. 1993 No. 19; Schedule 1 was substituted by S.R. 1995 No. 26 and amended by S.R. 1996 No. 109