STATUTORY RULES OF NORTHERN IRELAND

2017 No. 90

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

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(**1**);

"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(**2**);

"the 1996 Regulations" means the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996(**3**);

"accreditation certificate" means a certificate, issued by the United Kingdom Accreditation Service(**4**) 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)(**5**);

"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);

(**1**) S.I. 1978/1039 (N.I. 9)
(**2**) O.J. L 100, 19.4.1994, p. 1
(**3**) S.R. 1996 No. 247, amended by S.R. 1998 No. 77, S.R. 1999 No. 125 and S.R. 2008 No. 422
(**4**) a company limited by guarantee incorporated in England and Wales under number 03076190
(**5**) O.J. L 96, 29.3.2014, p. 309

"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(**6**) (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;

(**6**) O.J. L 316, 14.11.2012, p.12

"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(**7**);

"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.

(**7**) O.J. L 218, 13.8.2008, p.30

(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(**8**) shall apply to these Regulations as it applies to an Act of the Assembly.

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(**9**);

(**8**) 1954 c. 33 (N.I.), as amended by S.I. 1999/663, Schedule 1 paragraph 9
(**9**) O.J. L 399, 30.12.1989, p. 18

(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.

Exceptions for trade fairs, exhibitions and demonstrations

4. The provisions of Part 2 (and of Part 5, so far as applying in relation to obligations under Part 2) do not apply to the showing of a product which is not in conformity with Part 2, at a trade fair, exhibition or demonstration, provided that a visible sign clearly indicates that—

(a) the product is not in conformity with Part 2; and

(b) the product is not available for sale until brought into conformity with Part 2.

PART 2

OBLIGATIONS OF ECONOMIC OPERATORS

CHAPTER 1

MANUFACTURERS

Design and manufacture in accordance with essential health and safety requirements

5. Before placing a product on the market or using a product for their own purposes, a manufacturer shall ensure that it has been designed and manufactured in accordance with the essential health and safety requirements.

Technical documentation and conformity assessment

6. Before placing a product on the market or using it for their own purposes, a manufacturer shall—

(a) carry out the relevant conformity assessment procedure or have a relevant conformity assessment procedure carried out; and

(b) draw up the technical documentation referred to—

(i) for a product in respect of which the conformity assessment procedure in regulation 39(1)(a) is being carried out, in point 3(c) of Module B of Annex III to the ATEX Directive (as amended from time to time);

(ii) for a product in respect of which the conformity assessment procedure in regulation 39(1)(b) is being carried out, in point 3(c) of Module B of Annex III to the ATEX Directive (as amended from time to time);

(iii) for a product in respect of which the conformity assessment procedure in regulation 39(1)(c) is being carried out, in point 2 of Module A of Annex VIII to the ATEX Directive (as amended from time to time);

(iv) for a product in respect of which the conformity assessment procedure in regulation 39(1)(d) is being carried out, in point 2 of Module G of Annex IX to the ATEX Directive (as amended from time to time);

EU declaration of conformity and CE marking

7.—(1) Save for where a product is a component, where the conformity of a product with the essential health and safety requirements has been demonstrated by a relevant conformity assessment procedure, the manufacturer shall, before placing the product on the market—

(a) draw up a declaration of conformity in accordance with regulation 40 (EU declaration of conformity); and

(b) affix the CE marking in accordance with regulation 41 (CE marking).

(2) The manufacturer shall keep the EU declaration of conformity up-to-date.

(3) Where the conformity of a component with the essential health and safety requirements has been demonstrated by a relevant conformity assessment procedure, the manufacturer shall, before placing the component on the market, draw up a written attestation of conformity in accordance with regulation 39(3) (Conformity assessment procedures).

(4) Subject to paragraph (5), before placing a product on the market, the manufacturer shall ensure that each product is accompanied by a copy of the EU declaration of conformity or attestation of conformity as appropriate.

(5) Where a large number of products are delivered to a single user, the batch or consignment may be accompanied by a single copy of the EU declaration or attestation of conformity as appropriate.

(6) Where a product is subject to more than one EU instrument requiring a declaration of conformity to be drawn up, the manufacturer shall draw up a single declaration of conformity, which—

(a) identifies the EU instruments; and

(b) includes references to the publication of those EU instruments in the Official Journal.

Retention of technical documentation and EU declaration of conformity

8. A manufacturer shall keep the technical documentation and the EU declaration of conformity (or where applicable, the attestation of conformity) drawn up in respect of a product for a period of 10 years beginning on the day on which the product is placed on the market.

Compliance procedures for series production

9.—(1) A manufacturer of a product which is manufactured by series production shall ensure that, before placing a product on the market, procedures are in place to ensure that any product so manufactured will be in conformity with Part 2.

(2) In doing so, the manufacturer shall take adequate account of—

(a) any change in the product design or characteristics; and

(b) any change in a harmonised standard or in another technical specification by reference to which the EU declaration of conformity or attestation of conformity was drawn up.

Monitoring

10.—(1) When appropriate, with regard to the risks to the health and safety of end-users presented by a product, a manufacturer shall—

(a) carry out sample testing of a product manufactured by the manufacturer made available on the market;

(b) investigate complaints that a product manufactured by the manufacturer is not in conformity with Part 2; and

(c) keep distributors informed of any actions carried out under sub-paragraphs (a) and (b).

(2) A manufacturer shall keep a register of—

(a) complaints that a product is not in conformity with Part 2;

(b) products which are found not to be in conformity with Part 2; and

(c) product recalls.

(3) A manufacturer shall keep an entry made in the register for a period of at least 10 years beginning on the day on which the obligation to make the entry arose.

Labelling and packaging of products

11.—(1) Before placing a product on the market, a manufacturer shall ensure that it bears a type, batch, serial number or other element allowing its identification.

(2) If the size or nature of the product does not provide sufficient space for the labelling requirements in paragraph (1), the manufacturer shall ensure that the information is provided on the packaging or in a document accompanying the product.

Labelling and packaging of products, other than components

12. Save for where a product is a component, before placing a product on the market a manufacturer shall ensure that it—

(a) bears the specific marking of explosion protection as referred to at paragraph 5(1)(f) of Schedule 1; and

(b) where applicable, bears the other markings and information referred to at paragraph 5 of Schedule 1.

Information identifying manufacturer

13.—(1) Before placing a product on the market, a manufacturer shall indicate on the product—

(a) the name, registered trade name or registered trade mark of the manufacturer; and

(b) a postal address at which the manufacturer can be contacted.

(2) Where it is not possible to indicate the information specified in paragraph (1) on the product, the manufacturer shall indicate that information—

(a) on the product packaging; or

(b) in a document accompanying the product.

(3) The information specified in paragraph (1) shall be in a language which can be easily understood by end-users and the competent national authority in the Member State in which it is to be made available to such end-users.

Instructions and safety information

14.—(1) When placing a product on the market, a manufacturer shall ensure that it is accompanied by instructions and safety information in a language which can be easily understood by end-users in the Member State in which it is to be made available on the market.

(2) The instructions and safety information referred to in paragraph (1) and any labelling shall be clear and understandable.

(3) Where the Member State referred to in paragraph (1) is the United Kingdom, the language referred to in that paragraph shall be English.

Duty to take action in respect of a product placed on the market which is considered not to be in conformity

15.—(1) A manufacturer who considers, or has reason to believe, that a product which the manufacturer has placed on the market is not in conformity with Part 2, shall immediately take the corrective measures necessary to—

(a) bring the product into conformity;

(b) withdraw the product; or

(c) recall the product.

(2) Where the product presents a risk , the manufacturer shall immediately inform the market surveillance authority, and the competent national authorities of any other Member State in which the manufacturer made the product available on the market, of the risk, giving details of—

(a) the respect in which the product is considered not to be in conformity with Part 2; and

(b) any corrective measures taken.

Provision of information and cooperation

16.—(1) A manufacturer shall, further to a reasoned request from the market surveillance authority, and within such period as the market surveillance authority may specify, provide the authority with the information and documentation necessary to demonstrate that the product is in conformity with Part 2—

(a) in paper or electronic form; and

(b) in a language which can be easily understood by the market surveillance authority.

(2) A manufacturer shall, at the request of the market surveillance authority, cooperate with the authority on any action taken to—

(a) evaluate a product in accordance with regulation 55 (Evaluation of products presenting a risk);

(b) eliminate the risks posed by a product which the manufacturer has placed on the market.

Authorised representatives

17.—(1) A manufacturer may, by written mandate, appoint a person established in the EU as their authorised representative to perform specified tasks on the manufacturer's behalf.

(2) A manufacturer who has appointed an authorised representative to perform, on the manufacturer's behalf, a task under these Regulations remains responsible for the proper performance of that task.

(3) The obligations laid down in regulation 5 (Design and manufacture in accordance with essential health and safety requirements) and regulation 6(b) (Technical documentation and conformity assessment) shall not form part of an authorised representative's mandate.

(4) The mandate shall allow the authorised representative to do at least the following in relation to a product covered by the mandate—

(a) perform the manufacturer's obligations under regulation 8 (Retention of technical documentation and EU declaration of conformity); and

(b) perform the manufacturer's obligations under regulation 16 (Provision of information and cooperation);

(5) An authorised representative shall comply with all duties imposed on the manufacturer in relation to each obligation under these Regulations that the authorised representative is appointed by the mandate to perform and, accordingly as far as those duties are concerned, as well as the penalties for failure to comply with those duties, references in these Regulations (except in this regulation) to the manufacturer is to be taken as including a reference to the authorised representative.

CHAPTER 2

IMPORTERS

Prohibition on placing on the market products which are not in conformity

18. An importer shall not place a product on the market unless it is in conformity with the essential health and safety requirements.

Requirements which shall be satisfied before an importer places a product on the market

19.—(1) Before placing a product on the market, an importer shall ensure that—

(a) a relevant conformity assessment procedure has been carried out by the manufacturer;

(b) the manufacturer has drawn up the technical documentation;

(c) the product—

(i) bears the CE marking where applicable;

(ii) is accompanied by the EU declaration of conformity or the attestation of conformity as appropriate; and

(iii) is accompanied by the required documents; and

(d) the manufacturer has complied with the requirements set out in regulation 11 (Labelling and packaging of products), regulation 12 (Labelling and packaging of products, other than components) and regulation 13 (Information identifying manufacturer).

(2) In paragraph (1)(c)(iii), "required documents" means any documents that are required to be provided with a product pursuant to—

(a) regulation 11(2) (Labelling and packaging of products);

(b) regulation 13(2)(b) (Information identifying manufacturer);

(c) regulation 14(1) (Instructions and safety information).

Prohibition on placing on the market products considered not to be in conformity with the essential health and safety requirements

20.—(1) Where an importer considers, or has reason to believe, that a product is not in conformity with the essential health and safety requirements, the importer shall not place the product on the market.

(2) Where the product presents a risk, the importer shall inform the manufacturer and the market surveillance authority of that risk.

Information identifying importer

21.—(1) Before placing a product on the market, an importer shall indicate on the product—

(a) the name, registered trade name or registered trade mark of the importer; and

(b) a postal address at which the importer can be contacted.

(2) The information specified in paragraph (1) shall be in a language which can be easily understood by end-users and by the competent national authority in the Member State in which it is to be made available to end-users.

(3) Where it is not possible to indicate the information specified in paragraph (1) on the product, the importer shall indicate that information—

(a) on the packaging; or

(b) in a document accompanying the product.

Instructions and safety information

22.—(1) When placing a product on the market, an importer shall ensure that it is accompanied by instructions and safety information in a language which can be easily understood by end-users in the Member State in which the product is to be made available.

(2) Where the Member State referred to in paragraph (1) is the United Kingdom, the language referred to in that paragraph shall be English.

Storage and transport

23. Each importer shall ensure that, whilst a product is under that importer's responsibility, its storage or transport conditions do not jeopardise its conformity with the essential health and safety requirements.

Monitoring

24.—(1) When deemed appropriate, with regard to the risks to the health and safety of end-users presented by a product, an importer shall—

(a) carry out sample testing of a product made available by the importer on the market;

(b) investigate complaints that a product placed on the market by the importer is not in conformity with Part 2; and

(c) keep distributors informed of actions carried out under sub-paragraphs (a) and (b).

(2) An importer shall keep a register of—

(a) complaints that a product is not in conformity with Part 2;

(b) products which are found not to be in conformity with Part 2; and

(c) product recalls.

(3) An importer shall keep an entry made in the register for a period of at least 10 years beginning on the day on which the obligation to make the entry arose.

Duty to take action in respect of a product placed on the market which is considered not to be in conformity

25.—(1) An importer who considers, or has reason to believe, that a product which the importer has placed on the market is not in conformity with Part 2 shall immediately take the corrective measures necessary to—

(a) bring the product into conformity;

(b) withdraw the product; or

(c) recall the product.

(2) Where the product presents a risk, the importer shall immediately inform the market surveillance authority, and the competent national authorities of any other Member State in which the importer made the product available on the market, of the risk, giving details of—

(a) the respect in which the product is considered not to be in conformity with Part 2; and

(b) any corrective measures taken.

Provision of information and cooperation

26.—(1) An importer shall, further to a reasoned request from the market surveillance authority and within such period as the market surveillance authority may specify, provide the authority with the information and documentation necessary to demonstrate that the product is in conformity with Part 2—

(a) in paper or electronic form; and

(b) in a language which can be easily understood by the market surveillance authority.

(2) An importer shall, at the request of the market surveillance authority, cooperate with the authority on any action taken to—

(a) evaluate a product in accordance with regulation 55 (Evaluation of a product presenting a risk);

(b) eliminate the risks posed by the product which the importer has placed on the market.

Retention of technical documentation and EU declaration of conformity

27. An importer shall, for a period of ten years beginning on the day on which the product was placed on the market, keep and, upon request, make available to the market surveillance authority—

(a) a copy of the EU declaration of conformity or, where applicable, the attestation of conformity; and

(b) the technical documentation.

CHAPTER 3

DISTRIBUTORS

Duty to act with due care

28. When making a product available on the market, a distributor shall act with due care to ensure that it is in conformity with Part 2.

Requirements which shall be satisfied before a distributor makes a product available on the market

29.—(1) Before making a product available on the market, the distributor shall verify that—

(a) the product—

(i) bears a CE marking where applicable;

(ii) is accompanied by the EU declaration of conformity or the attestation of conformity;

(iii) is accompanied by the required documents; and

(iv) is accompanied by instructions and safety information in a language which can be easily understood by end-users in the Member State in which the product is to be made available on the market;

(b) the manufacturer has complied with the requirements set out in regulation 11 (Labelling and packaging of products), regulation 12 (Labelling and packaging of products, other than components) and regulation 13 (Information identifying manufacturer); and

(c) the importer has complied with the requirements set out in regulation 21 (Information identifying importer).

(2) In paragraph (1)(a)(iii), "required documents" means the documents that the manufacturer or importer is required to provide with the product pursuant to—

(a) regulation 11(2) (Labelling and packaging of products);

(b) regulation 13(2)(b) (Information identifying manufacturer);

(c) regulation 21(3)(b) (Information identifying importer).

Storage and transport

30. Each distributor shall ensure that, whilst a product is under that distributor's responsibility, its storage or transport conditions do not jeopardise its conformity with the essential health and safety requirements.

Prohibition on making available on the market where product not considered to be in conformity with safety objectives

31.—(1) Where a distributor considers, or has reason to believe, that a product is not in conformity with the essential health and safety requirements, the distributor shall not make the product available on the market.

(2) Where the product presents a risk, the distributor shall inform the following persons of the risk—

(a) the manufacturer or the importer; and

(b) the market surveillance authority.

Duty to take action in respect of products made available on the market which are not in conformity

32.—(1) A distributor who considers, or has reason to believe, that a product which the distributor has made available on the market is not in conformity with Part 2 shall make sure that the necessary corrective measures are taken to—

(a) bring that product into conformity;

(b) withdraw the product; or

(c) recall the product.

(2) Where the product presents a risk, the distributor shall immediately inform the market surveillance authority, and the competent national authorities of the other Member States in which the distributor has made the product available on the market, of that risk, giving details of—

(a) the respect in which the product is considered not to be in conformity with Part 2; and

(b) any corrective measures taken.

Provision of information and cooperation

33.—(1) A distributor shall, further to a reasoned request from the market surveillance authority and within such period as the authority may specify, provide the authority with the information and documentation, in paper or electronic form, necessary to demonstrate that the product is in conformity with Part 2.

(2) A distributor shall, at the request of the market surveillance authority, cooperate with the authority on any action taken to—

(a) evaluate a product in accordance with regulation 55 (Evaluation of a product presenting a risk);

(b) eliminate the risks posed by a product which the distributor has made available on the market.

CHAPTER 4

IMPORTERS AND DISTRIBUTORS

Cases in which obligations of manufacturers apply to importers and distributors

34. An economic operator ("A") who would, but for this regulation, be considered an importer or distributor, is to be considered a manufacturer for the purposes of these Regulations and is subject to the obligations of the manufacturer under this Part, where A—

(a) places a product on the market under A's own name or trademark; or

(b) modifies a product already placed on the market in such a way that it may affect whether the product is in conformity with Part 2.

CHAPTER 5

ALL ECONOMIC OPERATORS

Identification of economic operators

35.—(1) An economic operator ("E") who receives a request from the market surveillance authority before the end of the relevant period, shall, within such period as the authority may specify, identify to the authority—

(a) any economic operator who has supplied E with a product; and

(b) any economic operator to whom E has supplied a product.

(2) The relevant period is—

(a) for information under paragraph (1)(a), a period of 10 years beginning on the day on which E was supplied with the product;

(b) for information under paragraph (1)(b), a period of 10 years beginning on the day on which E supplied the product.

Prohibition on improper use of CE marking

36.—(1) An economic operator shall not affix the CE marking to a product unless—

(a) that economic operator is the manufacturer; and

(b) the conformity of the product with the essential health and safety requirements has been demonstrated by a relevant conformity assessment procedure.

(2) An economic operator shall not affix to a product a marking (other than the CE marking) which purports to attest that the product is in conformity with the essential health and safety requirements.

(3) An economic operator shall not affix to a product a marking, sign or inscription which is likely to mislead any other person as to the meaning or form of the CE marking.

(4) An economic operator shall not affix to a product any other marking if the visibility, legibility and meaning of the CE marking would be impaired as a result.

Translation of declaration of conformity

37.—(1) Before making a product available on the market, an economic operator shall ensure that the EU declaration of conformity is prepared in, or translated into, the language required by the Member State in which it is to be made available on the market.

(2) Where the product is to be made available on the market in the United Kingdom, the language required is English.

PART 3

CONFORMITY ASSESSMENT

Presumption of conformity

38.—(1) A product which is in conformity with a harmonised standard (or part of such a standard) the reference to which has been published in the Official Journal is presumed to be in conformity with the essential health and safety requirements covered by that standard (or that part of that standard).

(2) The presumption in paragraph (1) is rebuttable.

Conformity assessment procedures

39.—(1) For the assessment of conformity of equipment, and where necessary those devices referred to at regulation 3(2)(b), the manufacturer shall follow one of the following procedures—

(a) for equipment-groups I and II, equipment-categories M 1 and 1, the manufacturer shall follow the EU-type examination set out in Annex III to the ATEX Directive (as amended from time to time), in conjunction with—

(i) conformity to type based on quality assurance of the production process as set out in Annex IV to the ATEX Directive (as amended from time to time); or

(ii) conformity to type based on product verification as set out in Annex V to the ATEX Directive (as amended from time to time);

(b) for equipment-groups I and II, equipment-categories M 2 and 2, the manufacturer shall follow—

(i) for internal combustion engines and electrical equipment in these groups and categories, the EU-type examination referred to in Annex III to the ATEX Directive (as amended from time to time) in conjunction with—

(aa) conformity to type based on internal production control plus supervised product testing as referred to in Annex VI to the ATEX Directive (as amended from time to time); or

(bb) conformity to type based on product quality assurance as set out in Annex VII to the ATEX Directive (as amended from time to time);

(ii) for other equipment in these groups and categories—

(aa) the procedure relating to internal production control referred to in Annex VIII to the ATEX Directive (as amended from time to time); and

(bb) the provision to a notified body of the technical documentation provided for in paragraph 2 of Annex VIII to the ATEX Directive (as amended from time to time);

(c) for equipment-group II, equipment category 3, the procedure relating to internal production control referred to in Annex VIII to the ATEX Directive (as amended from time to time);

(d) for equipment-groups I and II, instead of the procedures referred to in paragraphs (1)(a), (b) and (c), the manufacturer may follow conformity based on unit verification referred to in Annex IX to the ATEX Directive (as amended from time to time).

(2) The procedure referred to in paragraph (1)(a) or (d) shall be used for the conformity assessment of protective systems.

(3) For the assessment of conformity of components, the manufacturer shall—

(a) follow the procedures referred to in paragraph (1), with the exception of—

(i) affixing the CE marking; and

(ii) drawing up of the EU declaration of conformity;

(b) issue a written attestation of conformity which shall—

(i) confirm conformity of the component with Part 2 of these Regulations;

(ii) state the characteristics of the component; and

(iii) explain how the component shall be incorporated into equipment or protective systems to comply with the essential health and safety requirements.

(4) In respect of the safety aspects referred to in paragraph 13 of Schedule 1, instead of the conformity assessment procedures referred to in paragraphs (1) and (2), the manufacturer may follow the procedure referred to in Annex VIII to the ATEX Directive (as amended from time to time).

(5) Where the procedures referred to in paragraphs (1), (2) and (4) have not been applied, the market surveillance authority, may authorise the placing on the market and the putting into service, of a product other than a component, in the Member State concerned where—

(a) the market surveillance authority is in receipt of a duly justified request, requesting the placing on the market and the putting into service of a product, other than a component; and

(b) the use of the product is in the interests of protection.

(6) The manufacturer shall ensure that the documents and correspondence relating to the conformity assessment procedures referred to in paragraphs (1) to (4) are in the language determined by the Member State in which the product is made available on the market.

EU declaration of conformity

40. The EU declaration of conformity for a product shall—

(a) state that the fulfilment of the essential health and safety requirements have been demonstrated in respect of the product;

(b) have the model structure set out in Schedule 6; and

(c) contain the elements specified in Annexes III to IX to the ATEX Directive (as amended from time to time) for the relevant conformity assessment procedure followed in respect of the product.

CE marking

41.—(1) The CE marking shall be affixed visibly, legibly and indelibly to the product or the product's data plate.

(2) Where it is not possible or warranted, on account of the nature of the product, to affix the CE marking in accordance with paragraph (1), the CE marking shall be affixed to—

(a) the packaging; and

(b) the accompanying documents.

(3) The CE marking shall be followed by the identification number of the notified body which carried out the relevant conformity assessment procedure for the product, where that body is involved in the production control phase.

(4) The identification number of the notified body shall be affixed—

(a) by the notified body itself; or

(b) under the instructions of the notified body, by the manufacturer or the authorised representative.

(5) The CE marking and, where applicable, the identification number of the notified body shall be followed by—

(a) the specific marking of explosion protection as referred to in paragraph 5(1)(f) of Schedule 1;

(b) the symbols of the equipment-group and category; and

(c) where applicable, the other markings and information referred to in paragraph 5 of Schedule 1.

(6) Products designed for a particular explosive atmosphere shall be marked accordingly.

PART 4

NOTIFICATION OF CONFORMITY ASSESSMENT BODIES

Notified bodies

42.—(1) For the purposes of this Part, a notified body is a conformity assessment body—

(a) which has been notified by the Executive to the European Commission, the other Member States and Great Britain—

(i) under regulation 44 (Notification); or

(ii) before the commencement date, in accordance with Article 17 of the ATEX Directive; and

(b) in respect of which no objections are raised by the European Commission or other Member States—

(i) within two weeks of the date of notification, where the notification is accompanied by an accreditation certificate; or

(ii) within two months of the date of notification, where the notification is not accompanied by an accreditation certificate.

(2) Paragraph (1) has effect subject to regulation 48 (Changes to notifications).

Presumption of conformity of notified bodies

43.—(1) Where a conformity assessment body demonstrates its conformity with the criteria laid down in a harmonised standard (or part of such a standard), the reference of which has been published in the Official Journal, the Executive is to presume that the conformity assessment body meets the notified body requirements covered by that standard (or part of that standard).

(2) The presumption in paragraph (1) is rebuttable.

Notification

44.—(1) The Executive may notify to the European Commission, the other Member States and Great Britain only those conformity assessment bodies established within Northern Ireland that qualify for notification.

(2) A conformity assessment body qualifies for notification if the first and second conditions below are met.

(3) The first condition is that the conformity assessment body makes an application to the Executive for notification and that application is accompanied by—

(a) a description of—

(i) the conformity assessment activities that the conformity assessment body intends to carry out;

(ii) the conformity assessment module for which the conformity assessment body claims to be competent; and

(iii) the product for which the conformity assessment body claims to be competent; and either

(b) an accreditation certificate; or

(c) the documentary evidence necessary for the Executive to verify, recognise and regularly monitor the conformity assessment body's compliance with the notified body requirements.

(4) The second condition is that the Executive is satisfied that the conformity assessment body meets the notified body requirements.

(5) For the purposes of paragraph (4), the Executive may accept an accreditation certificate, provided in accordance with paragraph (3)(b), as sufficient evidence that the conformity assessment body fulfils the notified body requirements.

(6) When deciding whether to notify a conformity assessment body that qualifies for notification to the European Commission, the other Member States and Great Britain, the Executive may—

(a) have regard to any other matter which appears to the Executive to be relevant; and

(b) set conditions that the conformity assessment body shall meet.

(7) The Executive shall inform the European Commission of Northern Ireland's procedures for the assessment and notification of conformity assessment bodies and of any changes to those procedures.

Contents of notification

45. A notification under regulation 44 (Notification) shall include—

(a) the details of—

(i) the conformity assessment activities in respect of which the conformity assessment body has made its application for notification;

(ii) the conformity assessment module or modules in respect of which the conformity assessment body has made its application for notification; and

(iii) the product in respect of which the conformity assessment body has made its application for notification; and either

(b) an accreditation certificate; or

(c) documentary evidence which attests to—

(i) the conformity assessment body's competence; and

(ii) the arrangements in place to ensure that the conformity assessment body will be monitored regularly and will continue to meet the notified body requirements.

Monitoring

46.—(1) The Executive shall monitor each notified body with a view to verifying that the notified body—

(a) continues to meet the notified body requirements;

(b) meets any conditions set in accordance with regulation 44(6)(b); and

(c) carries out its functions in accordance with these Regulations.

(2) The Executive shall inform the European Commission of Northern Ireland's procedures for the monitoring of notified bodies and any changes to those procedures.

United Kingdom Accreditation Service

47. The Executive may authorise the United Kingdom Accreditation Service(**10**) to carry out the following activities on behalf of the Executive—

(a) assessing whether a conformity assessment body meets the notified body requirements; and

(b) monitoring notified bodies in accordance with regulation 46 (Monitoring).

Changes to notifications

48.—(1) Where the Executive determines that a notified body no longer meets a notified body requirement, or is failing to fulfil its obligations under these Regulations other than conditions set in accordance with regulation 44(6)(b), the Executive shall restrict, suspend or withdraw the body's status as a notified body under regulation 42.

(2) With the consent of a notified body, or where the Executive determines that a notified body no longer meets a condition set in accordance with regulation 44(6)(b), the Executive may restrict, suspend or withdraw the body's status as a notified body under regulation 42.

(3) In deciding what action is required under paragraph (1) or (2), the Executive shall have regard to the seriousness of the non-compliance.

(4) Where the Executive takes action under paragraph (1) or (2), the Executive shall immediately inform the European Commission, the other Member States and Great Britain.

(5) Where the Executive has taken action in respect of a notified body under paragraph (1) or (2), or where a notified body has ceased its activity, the notified body shall—

(a) at the request of the Executive, transfer its files relating to the activities it has undertaken as a notified body to another notified body or to the Executive; or

(b) in the absence of a request under sub-paragraph (a), keep its files relating to the activities it has undertaken as a notified body available for inspection by the Executive for a period of 10 years from the date they were created.

Operational obligations of notified bodies

49. When a notified body carries out a relevant conformity assessment procedure, Schedule 3 (Operational obligations of notified bodies) has effect.

(**10**) a company limited by guarantee incorporated in England and Wales under number 03076190

Subsidiaries and contractors

50.—(1) Where a notified body subcontracts specific conformity assessment activities, or has such activities carried out by a subsidiary, the activities are only to be treated as having been carried out by a notified body for the purposes of regulation 39 (Conformity assessment procedures) where the conditions in paragraphs (2) and (3) are satisfied.

(2) The notified body shall—

(a) ensure that the subcontractor or subsidiary meets the notified body requirements; and

(b) inform the Executive accordingly.

(3) The notified body shall have obtained the agreement of the client to the use of a subcontractor or subsidiary.

(4) Where a notified body subcontracts specific conformity assessment activities, or has such activities carried out by a subsidiary, the notified body shall, for a period of at least 10 years beginning on the day on which the activities are carried out, keep available for inspection by the Executive the documentation concerning—

(a) the assessment of the qualifications of the subcontractor or the subsidiary; and

(b) the conformity assessment activities carried out by the subcontractor or subsidiary.

(5) When monitoring a notified body in accordance with regulation 46, the Executive shall treat the notified body as responsible for the tasks performed by a subcontractor or subsidiary, wherever the subcontractor or subsidiary is established.

PART 5

MARKET SURVEILLANCE AND ENFORCEMENT

Designation of market surveillance authority

51. In Northern Ireland, the market surveillance authority for a product is the Executive.

Enforcement

52. The Executive shall enforce these Regulations and RAMS in its application to a product.

Enforcement powers

53.—(1) Schedule 4 (Enforcement powers of the Health and Safety Executive for Northern Ireland under the 1978 Order) is to have effect.

(2) In addition to the powers available to the Executive under paragraph (1), the Executive may use the powers set out in Schedule 5 (Compliance, withdrawal and recall notices).

Exercise of enforcement powers

54. When enforcing these Regulations, the Executive shall exercise its powers in a manner which is consistent with—

(a) regulation 55 (Evaluation of a product presenting a risk);

(b) regulation 56 (Enforcement action in respect of products which are not in conformity and which present a risk);

(c) regulation 57 (EU safeguard procedure);

(d) regulation 58 (Enforcement action in respect of products which are in conformity, but present a risk);

(e) regulation 59 (Enforcement action in respect of formal non-compliance); and

(f) regulation 60 (Restrictive measures).

Evaluation of a product presenting a risk

55. Where the Executive has sufficient reason to believe that a product presents a risk, the Executive shall carry out an evaluation in relation to the product covering the relevant requirements of Part 2.

Enforcement action in respect of products which are not in conformity and which present a risk

56.—(1) Where, in the course of the evaluation referred to in regulation 55, the Executive finds that the product is not in conformity with Part 2, it shall, without delay, require a relevant economic operator to—

(a) take appropriate corrective action to bring the product into conformity with those requirements within a prescribed period;

(b) withdraw the product within a prescribed period; or

(c) recall the product within a prescribed period.

(2) The Executive shall inform the notified body which carried out the conformity assessment procedure in respect of the product of—

(a) the respect in which the product is not in conformity with Part 2; and

(b) the actions which the Executive is requiring the relevant economic operator to take.

(3) Where the Executive considers that the lack of conformity referred to in paragraph (1) is not restricted to Northern Ireland, the Executive shall inform the European Commission, Great Britain and the other Member States of—

(a) the results of the evaluation; and

(b) the actions which the Executive has required the economic operator to take.

(4) Where the relevant economic operator does not take adequate corrective action within the prescribed period, the Executive shall take appropriate measures to—

(a) prohibit or restrict the product being made available on the market in Northern Ireland;

(b) withdraw the product from the market in Northern Ireland; or

(c) recall the product.

(5) Where the Executive takes measures under paragraph (4), the Executive shall notify the European Commission, Great Britain and the other Member States of those measures without delay.

(6) The notice in paragraph (5) shall include details about the product and, in particular—

(a) the data necessary for the identification of the product which is not in conformity with Part 2;

(b) the origin of the product;

(c) the nature of the lack of conformity alleged and the risk involved;

(d) the nature and duration of the measures taken;

(e) the arguments put forward by the relevant economic operator; and

(f) whether the lack of conformity is due to either of the following—

(i) failure of the product to meet requirements relating to a risk;

(ii) shortcomings in the harmonised standards referred to in regulation 38 (Presumption of conformity) conferring a presumption of conformity.

(7) In this regulation, "prescribed period" means a period which is—

(a) prescribed by the Executive; and

(b) reasonable and commensurate with the nature of the risk presented by the product.

EU safeguard procedure

57.—(1) Where another Member State has initiated the procedure under Article 35 of the ATEX Directive (as amended from time to time), the Executive shall, without delay, inform the European Commission, Great Britain and the other Member States of—

(a) any measures taken by the Executive in respect of the product;

(b) any additional information which the Executive has at its disposal relating to the lack of conformity of the product; and

(c) any objections that the Executive may have to the measure taken by the Member State initiating the procedure.

(2) Where a measure taken by another Member State in respect of a product is considered justified under Article 35(7) of the ATEX Directive (as amended from time to time), the Executive shall ensure that appropriate measures, such as withdrawal, are taken in respect of the product without delay.

(3) Where a measure taken by another Member State in respect of a product is considered justified by the European Commission under Article 36(1) of the ATEX Directive (as amended from time to time), the Executive shall take the necessary measures to ensure that the product is withdrawn from the market in Northern Ireland.

(4) Where the Executive has taken action under paragraph (2) or (3), the Executive shall inform the European Commission of the action taken.

(5) If a measure taken by the Executive pursuant to regulation 56 is considered unjustified by the European Commission under Article 36(1) of the ATEX Directive (as amended from time to time), the Executive shall withdraw that measure.

Enforcement action in respect of products which are in conformity, but present a risk

58.—(1) Where, having carried out an evaluation under regulation 55, the Executive finds that although a product is in conformity with Part 2, it presents a risk, the Executive shall require a relevant economic operator to take appropriate measures to—

(a) ensure that the product concerned, when placed on the market, no longer presents a risk;

(b) withdraw the product within a prescribed period; or

(c) recall the product within a prescribed period.

(2) Where the Executive takes measures under paragraph (1), the Executive shall notify the European Commission, Great Britain and the other Member States immediately.

(3) The notice referred to in paragraph (2) shall include details about the product and, in particular—

(a) the data necessary for the identification of the product concerned;

(b) the origin and the supply chain of the product;

(c) the nature of the risk involved; and

(d) the nature and duration of the measures taken by the Executive.

(4) In this regulation, "prescribed period" means a period which is—

(a) prescribed by the Executive; and

(b) reasonable and commensurate with the nature of the risk presented by the product.

Enforcement action in respect of formal non-compliance

59.—(1) Where the Executive makes one of the following findings relating to a product, it shall require a relevant economic operator to remedy the non-compliance concerned within a specified period—

(a) the CE marking—

(i) where required, has not been affixed; or

(ii) has been affixed otherwise than in accordance with regulations 36 (Prohibition on improper use of CE marking) and 41 (CE marking);

(b) where a notified body is involved in the production control phase for the product, the identification number of the notified body—

(i) has not been affixed; or

(ii) has been affixed otherwise than in accordance with regulation 41;

(c) the EU declaration of conformity or the attestation of conformity as appropriate—

(i) does not accompany the product; or

(ii) has been drawn up otherwise than in accordance with regulations 7 (EU declaration of conformity and CE marking) and 40 (EU declaration of conformity);

(d) the technical documentation is either not available or not complete;

(e) the following product information has not been affixed or has been affixed otherwise than in accordance with paragraph 5 of Schedule 1—

(i) specific marking of explosion protection in accordance with paragraph 5(1)(f) of Schedule 1;

(ii) the symbols of the equipment-group and category in accordance with paragraph 5(1)(g) of Schedule 1;

(iii) where applicable, the other markings and information required by paragraph 5(1) of Schedule 1.

(f) the following information that is required to be included in the labelling of the product is absent, false or incomplete—

(i) the information specified in regulation 13 (Information identifying manufacturer);

(ii) the information specified in regulation 21 (Information identifying importer); or

(g) any other administrative requirement imposed on the manufacturer or importer under Part 2 has not been fulfilled.

(2) The Executive shall not take any enforcement action against the relevant economic operator under these Regulations in respect of the non-compliance concerned until the period referred to in paragraph (1) has elapsed.

(3) Where the non-compliance referred to in paragraph (1) persists, the Executive shall take appropriate measures to—

(a) restrict or prohibit the product being made available on the market;

(b) ensure that the product is withdrawn; or

(c) ensure that the product is recalled.

(4) This regulation does not apply where a product presents a risk.

Restrictive measures

60. When enforcing these Regulations, the Executive shall comply with the requirements of Article 21 of RAMS (as amended from time to time) in relation to any measure to—

(a) prohibit or restrict a product being made available on the market;

(b) withdraw a product; or

(c) recall a product.

Offences

61.—(1) It is an offence for any person to contravene or fail to comply with any requirement of regulations 5 to 15, 16(2), 18 to 25, 26(2), 27 to 32, 33(2), 35 or 36.

(2) It is an offence for any person to contravene or fail to comply with any requirement of a withdrawal or recall notice served on that person by the Executive under these Regulations.

Penalties

62. Any person guilty of an offence under regulation 61 is 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 imprisonment for a term not exceeding two years or to both.

Defence of due diligence

63.—(1) Subject to paragraphs (2) and (4), in proceedings for an offence under regulation 61, it is a defence for a person ("P") to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) P may not rely on a defence under paragraph (1) which involves a third party allegation unless P has—

(a) served a notice in accordance with paragraph (3); or

(b) obtained the leave of the court.

(3) The notice shall—

(a) give any information in P's possession which identifies or assists in identifying the person who—

(i) committed the act or default; or

(ii) supplied the information on which P relied;

(b) be served on the person bringing the proceedings not less than seven clear days before the hearing of the proceedings.

(4) P may not rely on a defence under paragraph (1) which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied upon the information, having regard in particular to—

(a) the steps that P took, and those which might reasonably have been taken, for the purpose of verifying the information; and

(b) whether P had any reason to disbelieve the information.

(5) In this regulation, "third party allegation" means an allegation that the commission of the offence was due—

(a) to the act or default of another person; or

(b) to reliance on information supplied by another person.

Liability of persons other than principal offender

64.—(1) Where the commission of an offence by one person ("A") under regulation 61 is due to anything which another person ("B") did or failed to do in the course of business, B is guilty of the offence and may be proceeded against and punished, whether or not proceedings are taken against A.

(2) Where a body corporate commits an offence, a relevant person is also guilty of the offence where the body corporate's offence was committed—

(a) with the consent or connivance of the relevant person; or

(b) as a result of the negligence of the relevant person.

(3) In paragraph (2), "relevant person" means any of the following—

(a) a director, manager, secretary or other similar officer of the body corporate;

(b) in relation to a body corporate managed by its members, a member of that body corporate performing managerial functions; or

(c) a person purporting to act as a person described in sub-paragraphs (a) or (b).

Time limit for prosecution of offences

65.—(1) Subject to paragraph (2), information relating to an offence under regulation 61 that is triable by a magistrates' court may be so tried if it is laid within twelve months after the date on which evidence which is sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

(2) No proceedings may be brought more than three years after the commission of the offence.

(3) For the purposes of this regulation a certificate of the prosecutor as to the date on which the evidence referred to paragraph (1) came to light, is conclusive evidence.

(4) This regulation has effect subject to paragraphs 1(n) and 2(o) of Schedule 4 (Enforcement powers of the Health and Safety Executive for Northern Ireland under the 1978 Order).

Service of documents

66.—(1) Any document required or authorised by these Regulations to be served on a person may be served by—

(a) delivering it to that person in person;

(b) leaving it at that person's proper address; or

(c) sending it by post or electronic means to that person's proper address.

(2) In the case of a body corporate, a document may be served on a director of that body.

(3) In the case of a partnership, a document may be served on a partner or a person having control or management of the partnership business.

(4) For the purposes of this regulation, "proper address" means—

(a) in the case of a body corporate or its director—

(i) the registered or principal office of that body; or

(ii) the email address of the secretary or clerk of that body;

(b) in the case of a partnership, a partner or person having control or management of the partnership business—

(i) the principal office of the partnership; or

(ii) the email address of a partner or person having that control or management;

(c) in any other case, a person's last known address, which includes an email address.

(5) If a person to be served with a document has specified an address in the United Kingdom (other than that person's proper address) at which that person or someone on that person's behalf will accept service, that address shall also be treated as that person's proper address.

Recovery of expenses of enforcement

67.—(1) This regulation applies where a person commits an offence under regulation 61.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person to reimburse the Executive for any expenditure which the Executive has incurred in investigating the offence.

Action by the Executive

68.—(1) The Executive may itself take action which an economic operator could have been required to take by a notice served under these Regulations where the conditions for serving such a notice are met and either—

(a) the Executive has been unable to identify any economic operator on whom to serve such a notice; or

(b) the economic operator on whom such a notice has been served has failed to comply with it.

(2) If the Executive has taken action as a result of the condition in paragraph (1)(b) being met, the Executive may recover from the economic operator, as a civil debt, any costs or expenses reasonably incurred by the Executive in taking the action.

(3) A civil debt recoverable under paragraph (2) may be recovered summarily in proceedings under Article 62 of the Magistrates' Courts (Northern Ireland) Order 1981(**11**).

Appeals against notices

69.—(1) An application for an order to vary or set aside the terms of a notice served under these Regulations may be made—

(a) by the economic operator on whom the notice has been served;

(b) in the case of a notice other than a recall notice, by a person having an interest in the product in respect of which the notice has been served.

(2) An application shall be made before the end of the period of 21 days beginning with the day on which the notice was served.

(3) The appropriate court may only make an order setting aside a notice served under these Regulations if satisfied—

(a) that the product to which the notice relates is in conformity with Part 2 and does not present a risk; or

(b) that the Executive failed to comply with regulation 54 (Exercise of enforcement powers) when serving the notice.

(**11**) S.I. 1981/1675 (N.I. 26)

(4) On an application to vary the terms of a notice served under these Regulations, the appropriate court may vary the terms of the notice as it considers appropriate.

(5) In this regulation—

(a) the "appropriate court" is to be determined in accordance with regulation 70 (Appropriate court for appeals against notices); and

(b) "notice" means any of the following—

(i) a notice to warn served in accordance with Schedule 4 (Enforcement powers of the Health and Safety Executive for Northern Ireland under the 1978 Order);

(ii) a suspension notice served in accordance with Schedule 4;

(iii) a compliance notice served in accordance with Schedule 5 (Compliance, withdrawal and recall notices);

(iv) a withdrawal notice served in accordance with Schedule 5;

(v) a recall notice served in accordance with Schedule 5.

Appropriate court for appeals against notices

70.—(1) The appropriate court for the purposes of regulation 69 is—

(a) the court in which proceedings have been brought in relation to the product for an offence under regulation 61 (Offences);

(b) an industrial tribunal seized of appeal proceedings against a notice which relates to the product and which has been served under or by virtue of paragraph 1 of Schedule 4 (Enforcement powers of the Health and Safety Executive for Northern Ireland under the 1978 Order); or

(c) in any other case, a magistrates' court.

(2) A person aggrieved by an order made by a magistrates' court pursuant to an application under regulation 69, or by a decision of such a court not to make such an order, may appeal against that order or decision to the county court.

PART 6

MISCELLANEOUS

Transitional provisions

71.—(1) A certificate issued, or approval granted, by a notified body under Schedule 6 to the 1996 Regulations, or any enactment of another Member State which implemented the 1994 Directive, is to be treated as a certificate issued or approval granted under the ATEX Directive.

(2) Regulation 2(6) has no effect until the entry into force of any amendment made to Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement by a Decision of the EEA Joint Committee, inserting a reference to the ATEX Directive into that Annex.

Consequential amendments, revocations and savings

72.—(1) The statutory provisions referred to in column 1 of Schedule 7 shall be amended to the extent specified in column 3 of that Schedule. In relation to a product placed on the market before the commencement date, the amendments in Schedule 7 do not apply.

(2) The statutory provisions referred to in column 1 of Schedule 8 shall be revoked to the extent specified in column 3 of that Schedule.

(3) The 1996 Regulations, the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations (Northern Ireland) 1999(**12**) and the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations (Northern Ireland) 2008(**13**) continue to apply, as if they had not been revoked, to a product placed on the market or put into service before the commencement date.

Sealed with the Official Seal of the Department for the Economy on 15th June 2017

L.S.

Colin Jack
A senior officer of the Department for the Economy

(**12**) S.R. 1999 No. 125
(**13**) S. R. 2008 No. 422