

1990 No. 13

HEALTH AND SAFETY

The Electrical Equipment for Explosive Atmospheres
(Certification) Regulations 1990

<i>Made</i> - - - -	<i>8th January 1990</i>
<i>Laid before Parliament</i>	<i>10th January 1990</i>
<i>Coming into force</i>	<i>31st January 1990</i>

The Secretary of State, being the Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures for safety and consumer protection as respects electrical equipment and any provisions concerning the composition, labelling, marketing, classification or description of electrical equipment, in the exercise of the powers conferred on him by that section, and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement and extent

1. These Regulations, which extend to Great Britain, may be cited as the Electrical Equipment for Explosive Atmospheres (Certification) Regulations 1990 and shall come into force on 31st January 1990.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“certificate of conformity” means the certificate referred to in Article 8 of the Framework Directive except that in relation to the electrical equipment designed for work underground in mines susceptible to firedamp it means the certificate referred to in Article 8 of the Gassy Mines Directive;

“electrical equipment” means any constituent part of an electrical installation or any other electrical device to which the Framework Directive or the Gassy Mines Directive applies;

“the First Specific Directive” means Council Directive No. 79/196/EEC(c) concerning electrical equipment for use in potentially explosive atmospheres employing certain types of protection, as adapted to technical progress by Commission Directives No. 84/47/EEC(d) and 88/571/EEC(e);

“the Framework Directive” means Council Directive No. 76/117/EEC(f) concerning electrical equipment for use in potentially explosive atmospheres;

“the Gassy Mines Directive” means Council directive No. 82/130/EEC(g) concerning electrical equipment for use in potentially explosive atmospheres in mines susceptible to firedamp, as adapted to technical progress by Commission Directive No. 88/35/EEC(h);

(a) S.I. 1972/1811.

(b) 1972 c. 68.

(c) OJ No. L43, 20.2.79, p. 20.

(d) OJ No. L31, 2.2.84, p. 19.

(e) OJ No. L311, 17.11.88, p. 46.

(f) OJ No. L24, 30.1.76, p. 45.

(g) OJ No. L59, 2.3.82, p. 10.

(h) OJ No. L20, 26.1.88, p. 28.

“harmonised standards” means the standards specified in Annex 1 of the First Specific Directive except that in relation to the electrical equipment designed for work underground in mines susceptible to firedamp it means the standards specified in Annex A (amended in accordance with Annex B) to the Gassy Mines Directive;

“certification body” means a body appointed for the purposes of regulation 3(1);

“inspection certificate” means the certificate referred to in Article 9 of the Framework Directive except that in relation to the electrical equipment designed for work underground in mines susceptible to firedamp it means the certificate referred to in Article 9 of the Gassy Mines Directive.

(2) Unless the context otherwise requires, any reference in these Regulations to—

- (a) a numbered regulation, is a reference to the regulation so numbered in these Regulations;
- (b) a numbered paragraph, is a reference to the paragraph so numbered in the regulation in which that reference appears.

Appointment of certification bodies

3.—(1) The Secretary of State shall appoint a body or bodies of persons for any one or more of the following purposes, that is to say,—

- (a) of assessing and testing electrical equipment (or such electrical equipment as may be specified in the appointment) to determine whether it conforms to the appropriate harmonised standards and of issuing certificates of conformity;
- (b) of assessing and testing electrical equipment (or such electrical equipment as may be specified in the appointment) which differs from harmonised standards to determine whether it offers a degree of safety at least equivalent to those standards and of issuing inspection certificates;
- (c) of carrying out surveillance of the manufacture of electrical equipment (or such electrical equipment as may be specified in the appointment) to ascertain whether the equipment conforms to the type of equipment in respect of which a certificate of conformity or, as the case may be, an inspection certificate has been issued;
- (d) of doing such other things as may be required or permitted by or in connection with these Regulations,

on such conditions as he thinks fit for the efficient and proper functioning of such body or bodies.

(2) The said appointment may be for a fixed or indefinite time and may be revoked at any time; the Secretary of State may also vary or withdraw any or all of the conditions of appointment or impose additional conditions at any time for the efficient and proper functioning of the certification body.

Certificates of conformity

4.—(1) A manufacturer of electrical equipment may apply to a certification body (which has been appointed for the purpose set out in regulation 3(1)(a) in respect of the electrical equipment for which the application is made) for a certificate of conformity attesting that the electrical equipment which is the subject of the application conforms to the harmonised standards.

(2) The application shall be in writing and shall be accompanied by such information and documents as the certification body may reasonably require. Samples of the equipment to which the application relates and such other information and documents as the certification body may reasonably require shall be provided by the manufacturer when so requested by that body.

(3) On receipt of an application for a certificate of conformity in relation to electrical equipment, the certification body shall, on receipt of such fee as may be agreed between the certification body and the manufacturer (or on receipt of the acceptance by the manufacturer of the quotation given to him by the certification body in respect of such fee), carry out such checks, examinations and tests as are required for it to determine whether the electrical equipment conforms to the harmonised standards.

(4) If, as a result of the checks, examinations and tests carried out in accordance with paragraph (3), the certification body determines that the equipment conforms to the harmonised standards it shall issue to the manufacturer a certificate of conformity attesting that the equipment conforms to the harmonised standards and shall draw up a report of its determination.

(5) The certificate of conformity may be issued subject to such conditions as the certification body may reasonably stipulate.

Inspection certificates

5.—(1) A manufacturer of electrical equipment may apply to a certification body (which has been appointed for the purpose set out in regulation 3(1)(b) in respect of the electrical equipment for which the application is made) for an inspection certificate attesting that the electrical equipment which is the subject of the application offers a degree of safety at least equivalent to that of the harmonised standards.

(2) The application shall be in writing and shall be accompanied by such information and documents as the certification body may reasonably require. Samples of the equipment to which the application relates and such other information and documents as the certification body may reasonably require shall be provided by the manufacturer when so requested by that body.

(3) On receipt of an application for an inspection certificate in relation to electrical equipment, the certification body shall, on receipt of such fee as may be agreed between the certification body and the manufacturer (or on receipt of the acceptance by the manufacturer of the quotation given to him by the certification body in respect of such fee), carry out such checks, examinations and tests as are required for it to determine whether the electrical equipment which is the subject of the application offers a degree of safety at least equivalent to that of the harmonised standards.

(4) If as a result of the checks, examinations and tests carried out in accordance with paragraph (3), the certification body determines that the equipment offers a degree of safety at least equivalent to that of the harmonised standards, it shall, in the case of electrical equipment for use in mines draw up a report of its determination, and in every case proceed in accordance with paragraphs (5) to (7).

(5) The certification body shall send the specifications of the equipment, the inspection records, the draft inspection certificate and, in the case of electrical equipment for use in mines, the report of its determination to the other Member States or to their certification bodies or both which, within 4 months of receiving those documents, may submit comments, ask for additional inspections and where appropriate refer the matter to the Committee set up under Article 6 of the Framework Directive in accordance with Article 7 of that Directive or, in the case of electrical equipment for use in mines, to the Committee set up referred to in Article 6 of the Gassy Mines Directive in accordance with Article 7 of that Directive (in either case hereinafter referred to as "the Committee").

(6) If no Member State requests that the matter be referred to the Committee by the end of the period specified in paragraph (5), after considering the comments submitted in accordance with the procedure specified in that paragraph and if the results of any additional inspections requested are satisfactory, the certification body shall issue the inspection certificate.

(7) If a Member State requests that the matter be referred to the Committee, the certification body shall not issue an inspection certificate unless it has received a favourable opinion from the Committee.

(8) The inspection certificate may be issued subject to such conditions as the certification body may reasonably stipulate.

Refusal and withdrawal of certificates of conformity and inspection certificates

6.—(1) Where a certification body decides that it cannot issue a certificate of conformity or an inspection certificate it shall forthwith send the manufacturer a notice in writing of that decision.

(2) The certification body which has issued the certificate of conformity or the inspection certificate may withdraw the certificate if it has reason to believe that—

- (a) the certificate should not have been issued;
- (b) the conditions stipulated by the certification body have not been complied with within a reasonable specified period; or
- (c) the electrical equipment distributed by the manufacturer is not in conformity with the certified design.

(3) Where the certification body decides to withdraw a certificate of conformity or an inspection certificate it shall forthwith send the manufacturer a notice in writing of its decision.

(4) Notices under paragraphs (1) and (3) shall—

- (a) state in detail the grounds on which the decision is based;
- (b) inform the manufacturer of his right to a review under regulation 7 and of the time-limit for making the application for review referred to in paragraph (1) of that regulation.

Review of decisions

7.—(1) Subject to paragraph (2), a manufacturer who is aggrieved by the decision of a certification body—

- (a) refusing to issue a certificate of conformity or an inspection certificate;
- (b) issuing him a certificate on or subject to any condition whereby he is aggrieved; or
- (c) withdrawing a certificate in accordance with regulation 6(2),

may within 60 days of receiving notice of the decision apply to the Secretary of State for a review of the decision in accordance with the procedure set out in regulation 8.

(2) Paragraph (1) shall not apply to the decision of a certification body refusing to issue an inspection certificate, if the sole reason for the decision is that the Committee referred to in regulation 5(5) had not reached a favourable opinion in relation to the application.

Procedure for review

8.—(1) An application for review shall be made in writing to the Secretary of State and shall state the grounds on which it is made and shall be accompanied by—

- (a) copies of the documents which the applicant provided to the certification body in connection with the application; and
- (b) a copy of the notice of the decision referred to in regulation 6(1), or as the case may be, in regulation 6(3).

(2) On an application for review the Secretary of State may—

- (a) hold an enquiry in connection therewith; and
- (b) appoint one or more assessors for the purpose of assisting with the review or any such enquiry.

(3) The Secretary of State may, in such cases as he considers it appropriate to do so, having regard to the nature of the questions which appear to him to arise, direct that an application for review under this regulation shall be heard, but not determined, on his behalf by a person appointed by him for that purpose.

(4) Where an application for review is to be heard by a person appointed in pursuance of paragraph (3), he shall hold an enquiry in connection therewith, and at the conclusion of the enquiry he shall prepare his report comprising a summary of the evidence given or submitted at the enquiry together with his findings of fact and include therein his recommendations if any or his reason for not making any recommendation. He shall then send his report (together with all the documents and papers that he took into consideration in preparing his report) to the Secretary of State. After considering the report, all the relevant documents and papers, the Secretary of State shall determine the review.

(5) On an application for review the Secretary of State shall have the power to do anything which a certification body is authorised or required to do under these Regulations. He shall, if he determines to find in favour of the manufacturer, grant the application, and shall require the certification body to issue the appropriate certificate subject to such conditions as the Secretary of State may stipulate and upon being so required the certification body shall issue the certificate forthwith.

(6) A copy of the determination (and, where appropriate, of the report) shall be sent to each of the parties to the review.

(7) The Secretary of State may pay to any person appointed to hear an application for review under this regulation on his behalf such remuneration and allowances as the Secretary of State may with the consent of the Treasury determine.

Notification to the European Commission and to Member States

9.—(1) The Secretary of State shall send to the European Commission and the other Member States a list of the certification bodies appointed by him under regulation 3(1) and shall immediately notify any change in that list.

(2) A certification body shall send to—

- (a) the Secretary of State; and
- (b) the other Member States,

a copy of the main points in any certificate of conformity or inspection certificate that it has issued within one month of issuing the certificate, and shall make available to them or any one or more of them on request copies of the reports drawn in accordance with regulation 4(4) or regulation 5(4).

(3) Where a certification body decides to withdraw a certificate of conformity or an inspection certificate in accordance with regulation 6(2), it shall forthwith notify its decision to the bodies specified in sub-paragraphs (a) and (b) of paragraph (2), stating the grounds for the decision.

Access to place of manufacture

10.—(1) The manufacturer of electrical equipment which is the subject of an application for a certificate of conformity or of an inspection certificate shall allow the certification body reasonable access to the place where the equipment is manufactured if such access is essential to assist the proper determination of the application.

(2) The manufacturer shall also allow the certification body reasonable access to the place where the equipment is manufactured for the purpose specified in regulation 3(1)(c).

Use of the distinctive Community mark

11.—(1) Where a certificate of conformity or an inspection certificate relating to electrical equipment is in force, the manufacturer of that equipment may affix to it the appropriate distinctive Community mark that is to say,—

- (a) for electrical equipment to which the Framework Directive applies, that specified in Annex II to the First Specific Directive and such mark shall have effect as described in paragraph 1 of Article 10 of that Directive;
- (b) for electrical equipment to which the Gassy Mines Directive applies, that specified in Annex C to the Gassy Mines Directive and such mark shall attest in accordance with paragraph 1 of Article 11 of that Directive.

(2) Where required by the certificate of conformity or inspection certificate, the manufacturer shall ensure that when equipment is supplied, it is accompanied by instructions defining the special conditions governing its use.

(3) The manufacturer shall not affix to electrical equipment the appropriate distinctive Community mark unless there is in force the appropriate certificate of conformity or the appropriate inspection certificate in relation to that equipment and the equipment complies in all respects with the terms of the relevant certificate.

(4) No person shall affix to electrical equipment any mark which is liable to be confused with the appropriate distinctive Community mark.

(5) Paragraphs (3) and (4) shall have effect as if they were health and safety regulations made under section 15 of the Health and Safety at Work etc. Act 1974^(a) and the provisions of that Act as regards enforcement and offences shall apply to those paragraphs.

Signed by order of the Secretary of State.

8th January 1990

Patrick Nicholls
Parliamentary Under Secretary of State,
Department of Employment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directives No. 76/117/EEC (OJ No. L24, 30.1.76, p. 45) concerning electrical equipment for use in potentially explosive atmospheres, 79/196/EEC (OJ No. L43, 20.2.79, p. 20) concerning electrical equipment for use in potentially explosive atmospheres employing certain types of protection, as adapted to technical progress by Commission Directives No. 84/47/EEC (OJ No. L31, 2.2.84, p. 19) and 88/571/EEC (OJ No. L311, 17.11.88, p. 46) and Council Directive No. 82/130/EEC (OJ No. L59, 2.3.82 p. 10) concerning electrical equipment for use in potentially explosive atmospheres in mines susceptible to firedamp, as adapted to technical progress by Commission Directive No. 88/35/EEC (OJ No. L20, 26.1.88, p. 28).

The Regulations—

- (a) require the Secretary of State to appoint certification bodies for specified purposes on such conditions and for such periods as he thinks fit, and empower him to revoke any such appointments (regulation 3);
- (b) enable a manufacturer to apply to an appropriate certification body for a certificate of conformity attesting that the electrical equipment, the subject of the application, conforms to the harmonised standards specified in the relevant Directive; and empower the certification body to carry out such checks, examinations and tests as are required for it to determine whether the equipment conforms to those standards and to issue to the manufacturer a certificate of conformity if it determines that the equipment conforms to those standards (regulation 4);
- (c) enable a manufacturer to apply to an appropriate certification body for an inspection certificate attesting that the electrical equipment, the subject of the application, offers a degree of safety at least equivalent to that of the harmonised standards; and empower the certification body to carry out such checks, examinations and tests as are required for it to determine whether the equipment offers that degree of safety and if it determines that the equipment offers that degree of safety require the certification body to follow the specified procedure before issuing an inspection certificate to the manufacturer (regulation 5);
- (d) require a certification body to send a written notice to the manufacturer where it refuses to issue a certificate of conformity or an inspection certificate or withdraws, in specified cases, the certificate previously issued by it (regulation 6);
- (e) enable a manufacturer to apply to the Secretary of State for a review of a decision by a certification body refusing to issue a certificate of conformity or an inspection certificate or issuing him a certificate on or subject to any condition whereby he is aggrieved or withdrawing the certificate previously issued by it (regulation 7);

^(a) 1974 c.37; section 15 was amended by the Employment Protection Act 1975 (c.71), Schedule 15, paragraph 6.

- (f) provide the procedure for a review (regulation 8);
- (g) require the Secretary of State to send a list of the certification bodies appointed by him to the European Commission and to other Member States (regulation 9);
- (h) require the manufacturer who has applied for a certificate of conformity or an inspection certificate to allow the certification body reasonable access to the place where the electrical equipment is manufactured if such access is essential to assist the proper determination of the application or for the purpose of carrying out surveillance of the manufacture of the equipment (regulation 10);
- (i) empower the manufacturer to affix to the electrical equipment the appropriate distinctive Community mark; require the manufacturer to supply with the equipment instructions defining the special conditions governing the use of the equipment, if so required by the certificate of conformity or the inspection certificate; and make it an offence for a manufacturer to affix to the electrical equipment the appropriate distinctive Community mark unless there is in force the appropriate certificate in relation to that equipment and the equipment complies in all respects with the terms of the relevant certificate, or for any person to affix to the electrical equipment any mark liable to be confused with the appropriate distinctive Community mark (regulation 11).