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STATUTORY INSTRUMENTS

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**1996 No. 192**

**The Equipment and Protective Systems Intended for Use  
in Potentially Explosive Atmospheres Regulations 1996**

**PART IV  
ENFORCEMENT**

**Application of Schedule 14**

**15.**—(1) Subject to paragraph (2) below, Schedule 14 shall have effect for the purposes of providing for the enforcement of these Regulations and for matters incidental thereto.

(2) Except in the case of equipment, a protective system or device which, in the opinion of the enforcement authority, is not safe, where the enforcement authority has reasonable grounds for suspecting that the CE marking has not been correctly affixed to equipment, a protective system or device, as the case may be, it may give notice in writing to the responsible person who placed that equipment, protective system or device, on the market and, subject to paragraph (3) below, no action pursuant to Schedule 14 may be taken, and no proceedings may be brought pursuant to regulation 16 below, in respect of that equipment, protective system or device, as the case may be, until such notice has been given and the person to whom it is given has failed to comply with its requirements.

(3) Notwithstanding the provisions of paragraph (2) above, for the purpose of ascertaining whether or not the CE marking has been correctly affixed, action may be taken pursuant to section 20 of the Health and Safety at Work etc. Act 1974(1) as it is applied by Schedule 14.

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

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

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

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(1) 1974 c. 37.

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

### **Offences**

**16.** Any person who contravenes or fails to comply with regulation 6, 7 or 8 above shall be guilty of an offence.

### **Penalties**

**17.** A person guilty of an offence under regulation 16 above shall be liable on summary conviction—

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

or to both.

### **Defence of due diligence**

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

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

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

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

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

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

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

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

**19.**—(1) Where the commission by any person of an offence under regulation 16 above is due to the act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1) above) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part

of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.