

SCHEDULE 1

Regulation 1(2)

REVOCATION OF REGULATIONS

The Electrical Equipment for Explosive Atmospheres (Certification) Regulations 1990(1)	1st July 2003
The Electrical Equipment for Explosive Atmospheres (Certification) (Amendment) Regulations 1990(2)	1st July 2003
The Electrical Equipment for Explosive Atmospheres (Certification) (Amendment) (No. 2) Regulations 1991(3)	1st July 2003
The Electrical Equipment for Explosive Atmospheres (Certification) (Amendment) Regulations 1995(4)	1st July 2003
In the Coal and Other Mines (Locomotives) Regulations 1956(5)— (a) paragraphs (1) and (2) of regulation 3; and (b) regulations 4 and 5	1st July 2003

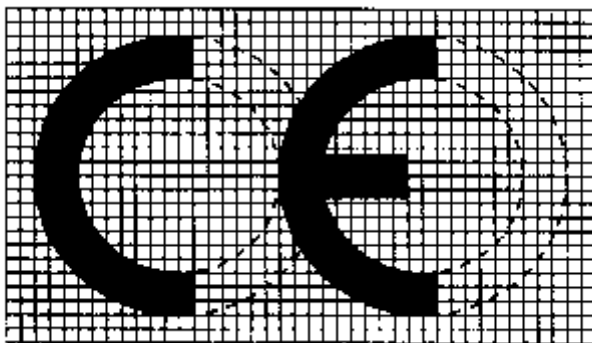
In the Regulations specified in the first column of Schedule 15, the regulations respectively specified in the third column of that Schedule

SCHEDULE 2

Regulations 2(2) and 6(2)(c)

THE CE MARKING AND OTHER INSCRIPTIONS

1. The CE conformity marking shall consist of the initials 'CE' taking the following form:



(1) [S.I. 1990/13.](#)
(2) [S.I. 1990/2377.](#)
(3) [S.I. 1991/2826.](#)
(4) [S.I. 1995/1186.](#)
(5) [S.I. 1956/1771.](#)

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2. If the marking is reduced or enlarged, the proportions given in the above graduated drawing must be respected.

3. The various components of the CE marking must have substantially the same vertical dimension, which may not be less than 5 mm.

This minimum dimension may be waived for small-scale equipment, protective systems or devices referred to in Article 1(2).

4. The CE marking shall be followed by the identification number of the notified body where such body is involved in the production control stage.

5. The CE marking shall be affixed distinctly, visibly, legibly and indelibly to equipment and protective systems, supplementary to the provisions of point 1.0.5 of Annex II(6).

6. Subject to paragraph 7 below, where equipment, a protective system or device is the subject of other Community Directives covering other aspects and which also provide for the affixing of the CE marking, such marking shall indicate that the equipment, protective system or device in question is also presumed to conform with the provisions of those other Directives.

7. Where one or more of the other Directives referred to in paragraph 6 above allow the manufacturer, during a transitional period, to choose which arrangements to apply, the CE marking shall indicate conformity only with the Directives applied by the manufacturer. In this case, particulars of the Directives applied, as published in the Official Journal of the European Communities, must be given in the documents, notices or instructions required by the Directives and accompanying such equipment, protective system or device.

8. Where equipment or protective systems are designed for a particular explosive atmosphere, they must be marked accordingly.

9. The affixing of markings on the equipment or protective systems which are likely to deceive third parties as to the meaning and form of the CE marking shall be prohibited. Any other marking may be affixed to the equipment or protective systems, provided that the visibility and legibility of the CE marking is not thereby reduced.

SCHEDULE 3

Regulation 2(2)

ESSENTIAL HEALTH AND SAFETY REQUIREMENTS RELATING TO THE DESIGN AND CONSTRUCTION OF EQUIPMENT AND PROTECTIVE SYSTEMS INTENDED FOR USE IN POTENTIALLY EXPLOSIVE ATMOSPHERES (Annex II of the ATEX Directive)

Preliminary observations

A. Technological knowledge, which can change rapidly, must be taken into account as far as possible and be utilized immediately.

B. For the devices referred to in Article 1(2), the essential requirements shall apply only in so far as they are necessary for the safe and reliable functioning and operation of those devices with respect to the risks of explosion.

(6) This is a reference to point 1.0.5 of the Essential Health and Safety Requirements contained in Annex II (of the ATEX Directive) which is set out in Schedule 3.

COMMON REQUIREMENTS FOR EQUIPMENT AND PROTECTIVE SYSTEMS

General requirements

General requirements

Principles of integrated explosion safety

- (1.0.1) Equipment and protective systems intended for use in potentially explosive atmospheres must be designed from the point of view of integrated explosion safety.

In this connection, the manufacturer must take measures:

- above all, if possible, to prevent the formation of explosive atmospheres which may be produced or released by equipment and by protective systems themselves,
- to prevent the ignition of explosive atmospheres, taking into account the nature of every electrical and non-electrical source of ignition,
- should an explosion nevertheless occur which could directly or indirectly endanger persons and, as the case may be, domestic animals or property, to halt it immediately and/or to limit the range of explosion flames and explosion pressures to a sufficient level of safety.

- (1.0.2) Equipment and protective systems must be designed and manufactured after due analysis of possible operating faults in order as far as possible to preclude dangerous situations.

Any misuse which can reasonably be anticipated must be taken into account.

Special checking and maintenance conditions

- (1.0.3) Equipment and protective systems subject to special checking and maintenance conditions must be designed and constructed with such conditions in mind.

Surrounding and conditions

- (1.0.4) Equipment and protective systems must be so designed and constructed as to be capable of coping with actual or foreseeable surrounding area conditions.

Marking

- (1.0.5) All equipment and protective systems must be marked legibly and indelibly with the following minimum particulars;

- name and address of the manufacturer,
- CE marking (see Annex X, point A),
- designation of series or type,
- serial number, if any,
- year of construction,
- the specific marking of explosion protection



followed by the symbol of the equipment group and category,

- for equipment-group II, the letter ‘G’ (concerning explosive atmospheres caused by gases, vapours or mists),

and/or

the letter ‘D’ (concerning explosive atmospheres caused by dust).

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Furthermore, where necessary, they must also be marked with all information essential to their safe use.

Instructions

(1.0.6) (a) All equipment and protective systems must be accompanied by instructions, including at least the following particulars:

- a recapitulation of the information with which the equipment or protective system is marked, except for the serial number (see 1.0.5.), together with any appropriate additional information to facilitate maintenance (e.g. address of the importer, repairer, etc.);
- instructions for safe:
 - putting into service,
 - use,
 - assembling and dismantling,
 - maintenance (servicing and emergency repair),
 - installation,
 - adjustment;
- where necessary, an indication of the danger areas in front of pressure-relief devices;
- where necessary, training instructions;
- details which allow a decision to be taken beyond any doubt as to whether an item of equipment in a specific category or a protective system can be used safely in the intended area under the expected operating conditions;
- electrical and pressure parameters, maximum surface temperatures and other limit values;
- where necessary, special conditions of use, including particulars of possible misuse which experience has shown might occur;
- where necessary, the essential characteristics of tools which may be fitted to the equipment or protective system.

(b) The instructions must be drawn up in one of the Community languages by the manufacturer or his authorized representative established in the Community.

On being put into service, all equipment and protective systems must be accompanied by a translation of the instructions in the language or languages of the country in which the equipment or protective system is to be used and by the instructions in the original language.

This translation must be made by either the manufacturer or his authorized representative established in the Community or the person introducing the equipment or protective system into the language area in question.

By way of derogation from this requirement, the maintenance instructions for use by the specialist personnel employed by the manufacturer or his authorized representative established in the Community may be drawn up in a single Community language understood by that personnel.

(c) The instructions must contain the drawings and diagrams necessary for the putting into service, maintenance, inspection, checking of correct operation and, where appropriate, repair of the equipment or protective system, together with all useful instructions, in particular with regard to safety.

- (d) Literature describing the equipment or protective system must not contradict the instructions with regard to safety aspects.

Selection of materials

- (1.1.1) (1.1) (1.1.1) The materials used for the construction of equipment and protective systems must not trigger off an explosion, taking into account foreseeable operational stresses.
- (1.1.2) Within the limits of the operating conditions laid down by the manufacturer, it must not be possible for a reaction to take place between the materials used and the constituents of the potentially explosive atmosphere which could impair explosion protection.
- (1.1.3) Materials must be so selected that predictable changes in their characteristics and their compatibility in combination with other materials will not lead to a reduction in the protection afforded; in particular, due account must be taken of the material's corrosion and wear resistance, electrical conductivity, impact strength, ageing resistance and the effects of temperature variations.

Design and Construction

- (1.2.1) (1.2) (1.2.1) Equipment and protective systems must be designed and constructed with due regard to technological knowledge of explosion protection so that they can be safely operated throughout their foreseeable lifetime.
- (1.2.2) Components to be incorporated into or used as replacements in equipment and protective systems must be so designed and constructed that they function safely for their intended purpose of explosion protection when they are installed in accordance with the manufacturer's instructions.

Enclosed structures and prevention of leaks

- (1.2.3) Equipment which may release flammable gases or dusts must wherever possible employ enclosed structures only.

If equipment contains openings or non-tight joints, these must as far as possible be designed in such a way that developing gases or dusts cannot give rise to explosive atmospheres outside the equipment.

Points where materials are introduced or drawn off must, as far as possible, be designed and equipped so as to limit escapes of flammable materials during filling or draining.

Dust deposits

- (1.2.4) Equipment and protective systems which are intended to be used in areas exposed to dust must be so designed that deposit dust on their surfaces is not ignited.

In general, dust deposits must be limited where possible. Equipment and protective systems must be easily cleanable.

The surface temperatures of equipment parts must be kept well below the glow temperature of the deposit dust.

The thickness of deposit dust must be taken into consideration and, if appropriate, means must be taken to limit the temperature in order to prevent a heat build up.

Additional means of protection

- (1.2.5) Equipment and protective systems which may be exposed to certain types of external stresses must be equipped, where necessary, with additional means of protection.

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Equipment must withstand relevant stresses, without adverse effect on explosion protection.

Safe opening

- (1.2.6) If equipment and protective systems are in a housing or a locked container forming part of the explosion protection itself, it must be possible to open such housing or container only with a special tool or by means of appropriate protection measures.

Protection against other hazards

- (1.2.7) Equipment and protective systems must be so designed and manufactured as to:
- (a) avoid physical injury or other harm which might be caused by direct or indirect contact;
 - (b) assure that surface temperatures of accessible parts or radiation which would cause a danger, are not produced;
 - (c) eliminate non-electrical dangers which are revealed by experience;
 - (d) assure that foreseeable conditions of overload shall not give rise to dangerous situations.

Where, for equipment and protective systems, the risks referred to in this paragraph are wholly or partly covered by other Community Directives, this Directive shall not apply or shall cease to apply in the case of such equipment and protective systems and of such risks upon application of those specific Directives.

Overloading of equipment

- (1.2.8) Dangerous overloading of equipment must be prevented at the design stage by means of integrated measurement, regulation and control devices, such as over-current cut-off switches, temperature limiters, differential pressure switches, flowmeters, time-lag relays, overspeed monitors and/or similar types of monitoring devices.

Flameproof enclosure systems

- (1.2.9) If parts which can ignite an explosive atmosphere are placed in an enclosure, measures must be taken to ensure that the enclosure withstands the pressure developed during an internal explosion of an explosive mixture and prevents the transmission of the explosion to the explosive atmosphere surrounding the enclosure.

Potential ignition sources

Hazards arising from different ignition sources

- (1.3.1) Potential ignition sources such as sparks, flames, electric arcs, high surface temperatures, acoustic energy, optical radiation, electromagnetic waves and other ignition sources must not occur.

Hazards arising from static electricity

- (1.3.2) Electrostatic charges capable of resulting in dangerous discharges must be prevented by means of appropriate measures.

Hazards arising from stray electric and leakage currents

- (1.3.3) Stray electric and leakage currents in conductive equipment parts which could result in, for example, the occurrence of dangerous corrosion, overheating of surfaces or sparks capable of provoking an ignition must be prevented.

Hazards arising from overheating

- (1.3.4) Overheating caused by friction or impacts occurring, for example, between materials and parts in contact with each other while rotating or through the intrusion of foreign bodies must, as far as possible, be prevented at the design stage.

Hazards arising from pressure compensation operations

- (1.3.5) Equipment and protective systems must be so designed or fitted with integrated measuring, control and regulation devices that pressure compensations arising from them do not generate shock waves or compressions which may cause ignition.

Hazards arising from external effects

- (1.4.1) (1.4) (1.4.1) Equipment and protective systems must be so designed and constructed as to be capable of performing their intended function in full safety, even in changing environmental conditions and in the presence of extraneous voltages, humidity, vibrations, contamination and other external effects, taking into account the limits of the operating conditions established by the manufacturer.
- (1.4.2) Equipment parts used must be appropriate to the intended mechanical and thermal stresses and capable of withstanding attack by existing or foreseeable aggressive substances.

Requirements in respect of safety-related devices

- (1.5.1) (1.5) (1.5.1) Safety devices must function independently of any measurement or control devices required for operation.
 - As far as possible, failure of a safety device must be detected sufficiently rapidly by appropriate technical means to ensure that there is only very little likelihood that dangerous situations will occur.
 - For electrical circuits the fail-safe principle is to be applied in general.
 - Safety-related switching must in general directly actuate the relevant control devices without intermediate software command.
- (1.5.2) In the event of a safety device failure, equipment and/or protective systems shall, wherever possible, be secured.
- (1.5.3) Emergency stop controls of safety devices must, as far as possible, be fitted with restart lockouts. A new start command may take effect on normal operation only after the restart lockouts have been intentionally reset.

Control and display units

- (1.5.4) Where control and display units are used, they must be designed in accordance with ergonomic principles in order to achieve the highest possible level of operating safety with regard to the risk of explosion.

Requirements in respect of devices with a measuring function for explosion protection

- (1.5.5) In so far as they relate to equipment used in explosive atmospheres, devices with a measuring function must be designed and constructed so that they can cope with foreseeable operating requirements and special conditions of use.

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- (1.5.6) Where necessary, it must be possible to check the reading accuracy and serviceability of devices with a measuring function.
- (1.5.7) The design of devices with a measuring function must incorporate a safety factor which ensures that the alarm threshold lies far enough outside the explosion and/or ignition limits of the atmospheres to be registered, taking into account, in particular, the operating conditions of the installation and possible aberrations in the measuring system.

Risks arising from software

- (1.5.8) In the design of software-controlled equipment, protective systems and safety devices, special account must be taken of the risks arising from faults in the programme.

Integration of safety requirements relating to the system

- (1.6.1) (1.6) (1.6.1) Manual override must be possible in order to shut down the equipment and protective systems incorporated within automatic processes which deviate from the intended operating conditions, provided that this does not compromise safety.
- (1.6.2) When the emergency shutdown system is actuated, accumulated energy must be dispersed as quickly and as safely as possible or isolated so that it no longer constitutes a hazard.
This does not apply to electrochemically-stored energy.

Hazards arising from power failure

- (1.6.3) Where equipment and protective systems can give rise to a spread of additional risks in the event of a power failure, it must be possible to maintain them in a safe state of operation independently of the rest of the installation.

Hazards arising from connections

- (1.6.4) Equipment and protective systems must be fitted with suitable cable and conduit entries.
When equipment and protective systems are intended for use in combination with other equipment and protective systems, the interface must be safe.

Placing of warning devices as parts of equipment

- (1.6.5) Where equipment or protective systems are fitted with detection or alarm devices for monitoring the occurrence of explosive atmospheres, the necessary instructions must be provided to enable them to be provided at the appropriate places.

SUPPLEMENTARY REQUIREMENTS IN RESPECT OF EQUIPMENT

Requirements applicable to equipment in category M of equipment-group I

Requirements applicable to equipment in category M of equipment-group I

Requirements applicable to equipment in category M I of equipment-group I

- (2.0.1.1) Equipment must be so designed and constructed that sources of ignition do not become active, even in the event of rare incidents relating to equipment.

Equipment must be equipped with means of protection such that:

- either, in the event of failure of one means of protection, at least an independent second means provides the requisite level of protection,
- or, the requisite level of protection is ensured in the event of two faults occurring independently of each other.

Where necessary, this equipment must be equipped with additional special means of protection.

It must remain functional with an explosive atmosphere present.

- (2.0.1.2) Where necessary, equipment must be so constructed that no dust can penetrate it.
- (2.0.1.3) The surface temperatures of equipment parts must be kept clearly below the ignition temperature of the foreseeable air/dust mixtures in order to prevent the ignition of suspended dust.
- (2.0.1.4) Equipment must be so designed that the opening of equipment parts which may be sources of ignition is possible only under non-active or intrinsically safe conditions. Where it is not possible to render equipment non-active, the manufacturer must affix a warning label to the opening part of the equipment.
If necessary, equipment must be fitted with appropriate additional interlocking systems.

Requirements applicable to equipment in category M 2 of equipment-group I

- (2.0.2.1) Equipment must be equipped with means of protection ensuring that sources of ignition do not become active during normal operation, even under more severe operating conditions, in particular those arising from rough handling and changing environmental conditions.
The equipment is intended to be de-energized in the event of an explosive atmosphere.
- (2.0.2.2) Equipment must be so designed that the opening of equipment parts which may be sources of ignition is possible only under non-active conditions or via appropriate interlocking systems. Where it is not possible to render equipment non-active, the manufacturer must affix a warning label to the opening part of the equipment.
- (2.0.2.3) The requirements regarding explosion hazards arising from dust applicable to category M 1 must be applied.

Requirements applicable to equipment in category I of equipment-group II

Explosive atmospheres caused by gases, vapours or hazes

- (2.1.1.1) Equipment must be so designed and constructed that sources of ignition do not become active, even in event of rare incidents relating to equipment.
It must be equipped with means of protection such that:
 - either, in the event of failure of one means of protection, at least an independent second means provides the requisite level of protection,
 - or, the requisite level of protection is ensured in the event of two faults occurring independently of each other.
- (2.1.1.2) For equipment with surfaces which may heat up, measures must be taken to ensure that the stated maximum surface temperatures are not exceeded even in the most unfavourable circumstances.
Temperature rises caused by heat build-ups and chemical reactions must also be taken into account.
- (2.1.1.3) Equipment must be so designed that the opening of equipment parts which might be sources of ignition is possible only under non-active or intrinsically safe conditions. Where it is not possible to render equipment non-active, the manufacturer must affix a warning label to the opening part of the equipment.

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If necessary, equipment must be fitted with appropriate additional interlocking systems.

Explosive atmospheres caused by air/dust mixtures

- (2.1.2.1.2.1) Equipment must be so designed and constructed that ignition of air/dust mixtures does not occur even in the event of rare incidents relating to equipment.

It must be equipped with means of protection such that

- either, in the event of failure of one means of protection, at least an independent second means provides the requisite level of protection,
- or, the requisite level of protection is ensured in the event of two faults occurring independently of each other.

- (2.1.2.2) Where necessary, equipment must be so designed that dust can enter or escape from the equipment only at specifically designated points.

This requirement must also be met by cable entries and connecting pieces.

- (2.1.2.3) The surface temperatures of equipment parts must be kept well below the ignition temperature of the foreseeable air/dust mixtures in order to prevent the ignition of suspended dust.

- (2.1.2.4) With regard to the safe opening of equipment parts, requirement 2.1.1.3 applies.

(2.2) Requirements for category 2 of equipment-group II

Explosive atmospheres caused by gases, vapours or mists

- (2.2.1.1) Equipment must be so designed and constructed as to prevent ignition sources arising, even in the event of frequently occurring disturbances or equipment operating faults, which normally have to be taken into account.

- (2.2.1.2) Equipment parts must be so designed and constructed that their stated surface temperatures are not exceeded, even in the case of risks arising from abnormal situations anticipated by the manufacturer.

- (2.2.1.3) Equipment must be so designed that the opening of equipment parts which might be sources of ignition is possible only under non-active conditions or via appropriate interlocking systems. Where it is not possible to render equipment non-active, the manufacturer must affix a warning label to the opening part of the equipment.

Explosive atmospheres caused by air/dust mixtures

- (2.2.2.1) Equipment must be designed and constructed so that ignition of air/dust mixtures is prevented, even in the event of frequently occurring disturbances or equipment operating faults which normally have to be taken into account.

- (2.2.2.2) With regard to surface temperatures, requirement 2.1.2.3 applies.

- (2.2.2.3) With regard to protection against dust, requirement 2.1.2.2 applies.

- (2.2.2.4) With regard to the safe opening of equipment parts, requirement 2.2.1.3 applies.

Requirements applicable to equipment in category 3 of equipment-group II

Explosive atmospheres caused by gases, vapours or mists

- (2.3.1.1) Equipment must be so designed and constructed as to prevent foreseeable ignition sources which can occur during normal operation.

- (2.3.1.2) Surface temperatures must not exceed the stated maximum surface temperatures under intended operating conditions. Higher temperatures in exceptional circumstances may be allowed only if the manufacturer adopts special additional protective measures.

Explosive atmospheres caused by air/dust mixtures

- (2.3.2.1) Equipment must be so designed and constructed that air/dust mixtures cannot be ignited by foreseeable ignition sources likely to exist during normal operation.
- (2.3.2.2) With regard to surface temperatures, requirement 2.1.2.3 applies.
- (2.3.2.3) Equipment, including cable entries and connecting pieces, must be so constructed that, taking into account the size of its particles, dust can neither develop explosive mixtures with air nor form dangerous accumulations inside the equipment.

SUPPLEMENTARY REQUIREMENTS IN RESPECT OF PROTECTIVE SYSTEMS

General requirements

General requirements

- (3.0.1) **3.** (3.0) (3.0.1) Protective systems must be dimensioned in such a way as to reduce the effects of an explosion to a sufficient level of safety.
- (3.0.2) Protective systems must be designed and capable of being positional in such a way that explosions are prevented from spreading through dangerous chain reactions or flashover and incipient explosions do not become detonations.
- (3.0.3) In the event of a power failure, protective systems must retain their capacity to function for a period sufficient to avoid a dangerous situation.
- (3.0.4) Protective systems must not fail due to outside interference.

Planning and design

Characteristics of materials

- (3.1.1) With regard to the characteristics of materials, the maximum pressure and temperature to be taken into consideration at the planning stage are the expected pressure during an explosion occurring under extreme operating conditions and the anticipated heating effect of the flame.
- (3.1.2) Protective systems designed to resist or contain explosions must be capable of withstanding the shock wave produced without losing system integrity.
- (3.1.3) Accessories connected to protective systems must be capable of withstanding the expected maximum explosion pressure without losing their capacity to function.
- (3.1.4) The reactions caused by pressure in peripheral equipment and connected pipe-work must be taken into consideration in the planning and design of protective systems.

Pressure-relief systems

- (3.1.5) If it is likely that stresses on protective systems will exceed their structural strength, provision must be made in the design for suitable pressure-relief devices which do not endanger persons in the vicinity.

Explosion suppression systems

Status: This is the original version (as it was originally made).

- (3.1.6) Explosion suppression systems must be so planned and designed that they react to an incipient explosion at the earliest possible stage in the event of an incident and counteract it to best effect, with due regard to the maximum rate of pressure increase and the maximum explosion pressure.

Explosion decoupling systems

- (3.1.7) Decoupling systems intended to disconnect specific equipment as swiftly as possible in the event of incipient explosions by means of appropriate devices must be planned and designed so as to remain proof against the transmission of internal ignition and to retain their mechanical strength under operating conditions.
- (3.1.8) Protective systems must be capable of being integrated into a circuit with a suitable alarm threshold so that, if necessary, there is cessation of product feed and output and shutdown of equipment parts which can no longer function safely.

SCHEDULE 4

Regulation 2(2)

(Annex I of the ATEX Directive: references in this Annex to Annex II are references to the Essential Health and Safety Requirements set out in Schedule 3)

CRITERIA DETERMINING THE CLASSIFICATION
OF EQUIPMENT-GROUPS INTO CATEGORIES

Equipment-group I

- (a) (a) Category M 1 comprises equipment designed and, where necessary, equipped with additional special means of protection to be capable of functioning in conformity with the operational parameters established by the manufacturer and ensuring a very high level of protection.

Equipment in this category is intended for use in underground parts of mines as well as those parts of surface installations of such mines endangered by firedamp and/or combustible dust.

Equipment in this category is required to remain functional, even in the event of rare incidents relating to equipment, with an explosive atmosphere present, and is characterized by means of protection such that:

- either, in the event of failure of one means of protection, at least an independent second means provides the requisite level of protection,
- or the requisite level of protection is assured in the event of two faults occurring independently of each other.

Equipment in this category must comply with the supplementary requirements referred to in Annex II, 2.0.1.

- (b) Category M 2 comprises equipment designed to be capable of functioning in conformity with the operational parameters established by the manufacturer and ensuring a high level of protection.

Equipment in this category is intended for use in underground parts of mines as well as those parts of surface installations of such mines likely to be endangered by firedamp and/or combustible dust.

This equipment is intended to be de-energized in the event of an explosive atmosphere.

The means of protection relating to equipment in this category assure the requisite level of protection during normal operation and also in the case of more severe operating conditions, in particular those arising from rough handling and changing environmental conditions.

Equipment in this category must comply with the supplementary requirements referred to in Annex II, 2.0.2.

Equipment-group II

- (a) (a) Category 1 comprises equipment designed to be capable of functioning in conformity with the operational parameters established by the manufacturer and ensuring a very high level of protection.

Equipment in this category is intended for use in areas in which explosive atmospheres caused by mixtures of air and gases, vapours or mists or by air/dust mixtures are present continuously, for long periods or frequently.

Equipment in this category must ensure the requisite level of protection, even in the event of rare incidents relating to equipment, and is characterized by means of protection such that:

- either, in the event of failure of one means of protection, at least an independent second means provides the requisite level of protection,
- or the requisite level of protection is assured in the event of two faults occurring independently of each other.

Equipment in this category must comply with the supplementary requirements referred to in Annex II, 2.1.

- (b) Category 2 comprises equipment designed to be capable of functioning in conformity with the operational parameters established by the manufacturer and of ensuring a high level of protection.

Equipment in this category is intended for use in areas in which explosive atmospheres caused by gases, vapours, mists or air/dust mixtures are likely to occur.

The means of protection relating to equipment in this category ensure the requisite level of protection, even in the event of frequently occurring disturbances or equipment faults which normally have to be taken into account.

Equipment in this category must comply with the supplementary requirements referred to in Annex II, 2.2.

- (c) Category 3 comprises equipment designed to be capable of functioning in conformity with the operating parameters established by the manufacturer and ensuring a normal level of protection.

Equipment in this category is intended for use in areas in which explosive atmospheres caused by gases, vapours, mists, or air/dust mixtures are unlikely to occur or, if they do occur, are likely to do so only infrequently and for a short period only.

Equipment in this category ensures the requisite level of protection during normal operation.

Equipment in this category must comply with the supplementary requirements referred to in Annex II, 2.3.

SCHEDULE 5

Regulation 4

EXCLUDED EQUIPMENT, PROTECTIVE SYSTEMS AND DEVICES

Medical devices intended for use in a medical environment,

Equipment and protective systems where the explosion hazard results exclusively from the presence of explosive substances or unstable chemical substances,

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,

Personal protective equipment covered by Directive 89/686/EEC,

Seagoing vessels and mobile offshore units together with equipment on board such vessels or units,

Means of transport, i.e. vehicles and their trailers intended solely for transporting passengers by air or by road, rail or water networks, as well as 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. Vehicles intended for use in a potentially explosive atmosphere shall not be excluded,

The equipment covered by Article 223(1)(b) of the Treaty establishing the European Community.

SCHEDULE 6

Regulation 10

(Annex III of the ATEX Directive)
MODULE EC-TYPE EXAMINATION

1. This module describes that part of the procedure by which a notified body ascertains and attests that a specimen representative of the production envisaged meets the relevant applicable provisions of the Directive.

2. The application for the EC-type examination shall be lodged by the manufacturer or his authorized representative established within the Community with a notified body of his choice.

- The application shall include:
- the name and address of the manufacturer and, if the application is lodged by the authorized representative, his name and address in addition;
- a written declaration that the same application has not been lodged with any other notified body;
- the technical documentation, as described in point 3.

The applicant shall place at the disposal of the notified body a specimen representative of the production envisaged and hereinafter called 'type'. The notified body may request further specimens if needed for carrying out the test programme.

3. The technical documentation shall enable the conformity of the product with the requirements of the Directive to be assessed. It shall, to the extent necessary for such assessment, cover the design, manufacture and operation of the product and shall to that extent contain:

- a general type-description;
- design and manufacturing drawings and layouts of components, sub-assemblies, circuits, etc.;
- descriptions and explanations necessary for the understanding of said drawings and layouts and the operation of the product;

- a list of the standards referred to in Article 5, applied in full or in part, and descriptions of the solutions adopted to meet the essential requirements of the Directive where the standards referred to in Article 5 have not been applied;
- results of design calculations made, examinations carried out, etc.;
- test reports.

4. The notified body shall:

(4.1) examine the technical documentation, verify that the type has been manufactured in conformity with the technical documentation and identify the elements which have been designed in accordance with the relevant provisions of the standards referred to in Article 5, as well as the components which have been designed without applying the relevant provisions of those standards;

(4.2) perform or have performed the appropriate examinations and necessary tests to check whether the solutions adopted by the manufacturer meet the essential requirements of the Directive where the standards referred to in Article 5 have not been applied;

(4.3) perform or have performed the appropriate examinations and necessary tests to check whether these have actually been applied, where the manufacturer has chosen to apply the relevant standards;

(4.4) agree with the applicant the location where the examinations and necessary tests shall be carried out.

5. Where the type meets the provisions of the Directive, the notified body shall issue an EC-type-examination certificate to the applicant. The certificate shall contain the name and address of the manufacturer, conclusions of the examination and the necessary data for identification of the approved type.

A list of the relevant parts of the technical documentation shall be annexed to the certificate and a copy kept by the notified body.

If the manufacturer or his authorized representative established in the Community is denied a type certification, the notified body shall provide detailed reasons for such denial.

Provision shall be made for an appeals procedure.

6. The applicant shall inform the notified body which holds the technical documentation concerning the EC-type-examination certificate of all modifications to the approved equipment or protective system which must receive further approval where such changes may affect conformity with the essential requirements or with the prescribed conditions for use of the product. This further approval is given in the form of an addition to the original EC-type-examination certificate.

7. Each notified body shall communicate to the other notified bodies the relevant information concerning the EC-type-examination certificates and additions issued and withdrawn.

8. The other notified bodies may receive copies of the EC-type-examination certificates and/or their additions. The annexes to the certificates shall be kept at the disposal of the other notified bodies.

9. The manufacturer or his authorized representative established in the Community shall keep with the technical documentation copies of EC-type-examination certificates and their additions for a period ending at least 10 years after the last equipment or protective system was manufactured.

Where neither the manufacturer nor his authorized representative is established within the Community, the obligation to keep the technical documentation available shall be the responsibility of the person who places the product on the Community market.

SCHEDULE 7

Regulation 10

(Annex IV of the ATEX Directive)

MODULE: PRODUCTION QUALITY ASSURANCE

1. This module describes the procedure whereby the manufacturer who satisfies the obligations of point 2 ensures and declares that the products concerned are in conformity with the type as described in the EC-type-examination certificate and satisfy the requirements of the Directive which apply to them. The manufacturer, or his authorized representative established in the Community, shall affix the CE marking to each piece of equipment and draw up a written declaration of conformity. The CE marking shall be accompanied by the identification number of the notified body responsible for EC monitoring, as specified in Section 4.

2. The manufacturer shall operate an approved quality system for production, final equipment inspection and testing as specified in Section 3 and shall be subject to monitoring as specified in Section 4.

3. Quality system

(3.1) The manufacturer shall lodge an application for assessment of his quality system with a notified body of his choice, for the equipment concerned.

The application shall include:

- all relevant information for the product category envisaged;
- the documentation concerning the quality system;
- technical documentation on the approved type and a copy of the EC-type-examination certificate.

(3.2) The quality system shall ensure compliance of the equipment with the type as described in the EC-type-examination certificate and with the requirements of the Directive which apply to them.

All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. The quality system documentation must permit a consistent interpretation of quality programmes, plans, manuals and records.

It shall contain, in particular, an adequate description of

- the quality objectives and the organizational structure, responsibilities and powers of the management with regard to equipment quality;
- the manufacturing, quality control and quality assurance techniques, processes and systematic actions which will be used;
- the examinations and tests which will be carried out before, during and after manufacture and the frequency with which they will be carried out;
- the quality records, such as inspection reports and test data, calibration data, reports on the qualifications of the personnel concerned, etc.;
- the means to monitor the achievement of the required equipment quality and the effective operation of the quality system.

(3.3) The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in Section 3.2. It shall presume conformity with these requirements in respect of quality systems which implement the relevant harmonized standard. The auditing team shall have at least one member with experience of evaluation in the equipment technology concerned. The evaluation procedure shall include an inspection visit to the manufacturer's premises. The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

(3.4) The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to uphold the system so that it remains adequate and efficient.

The manufacturer or his authorized representative shall inform the notified body which has approved the quality system of any intended updating of the quality system.

The notified body shall evaluate the modifications proposed and decide whether the amended quality system will still satisfy the requirements referred to in Section 3.2 or whether a re-assessment is required.

It shall notify its decision to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

Surveillance under the responsibility of the notified body

4.—(4.1) The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

(4.2) The manufacturer shall, for inspection purposes, allow the notified body access to the manufacture, inspection, testing and storage premises and shall provide it with all necessary information, in particular

- the quality system documentation
- the quality records, such as inspection reports and text data, calibration data, reports on the qualifications of the personnel concerned, etc.

(4.3) The notified body shall periodically carry out audits to ensure that the manufacturer maintains and applies the quality system and shall provide an audit report to the manufacturer.

(4.4) Furthermore, the notified body may pay unexpected visits to the manufacturer. During such visits, the notified body may carry out tests, or arrange for tests to be carried out, to check that the quality system is functioning correctly, if necessary. The notified body shall provide the manufacturer with a visit report and, if a test has taken place, with a test report.

5. The manufacturer shall, for a period ending at least 10 years after the last piece of equipment was manufactured, keep at the disposal of the national authorities:

- the documentation referred to in the second indent of Section 3.1;
- the updating referred to in the second paragraph of Section 3.4;
- the decisions and reports from the notified body which are referred to in Section 3.4, last paragraph, Section 4.3 and Section 4.4.

6. Each notified body shall apprise the other notified bodies of the relevant information concerning the quality system approvals issued and withdrawn.

SCHEDULE 8

Regulation 10

(Annex V of the ATEX Directive) MODULE: PRODUCT VERIFICATION

1. This module describes the procedure whereby a manufacturer or his authorized representative established within the Community checks and attests that the equipment subject to the provisions of point 3 are in conformity with the type as described in the EC-type-examination certificate and satisfy the relevant requirements of the Directive.

2. The manufacturer shall take all measures necessary to ensure that the manufacturing process guarantees conformity of the equipment with the type as described in the EC-type-examination

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certificate and with the requirements of the Directive which apply to them. The manufacturer or his authorized representative established in the Community shall affix the CE marking to each piece of equipment and shall draw up a declaration of conformity.

3. The notified body shall carry out the appropriate examinations and tests in order to check the conformity of the equipment, protective system or device referred to in Article 1(2), with the relevant requirements of the Directive, by examining and testing every product as specified in Section 4.

The manufacturer or his authorized representative shall keep a copy of the declaration of conformity for a period ending at least 10 years after the last piece of equipment was manufactured.

Verification by examination and testing of each piece of equipment

4.—(4.1) All equipment shall be individually examined and appropriate tests as set out in the relevant standard(s) referred to in Article 5 or equipment tests shall be carried out in order to verify their conformity with the type as described in the EC-type-examination certificate and the relevant requirements of the Directive.

(4.2) The notified body shall affix or have affixed its identification number to each approved item of equipment and shall draw up a written certificate of conformity relating to the tests carried out.

(4.3) The manufacturer or his authorized representative shall ensure that he is able to supply the notified body's certificates of conformity on request.

SCHEDULE 9

Regulation 10

(Annex VI of the ATEX Directive) MODULE: CONFORMITY TO TYPE

1. This module describes that part of the procedure whereby the manufacturer or his authorized representative established within the Community ensures and declares that the equipment in question is in conformity with the type as described in the EC-type-examination certificate and satisfy the requirements of the Directive applicable to them. The manufacturer or his authorized representative established within the Community shall affix the CE marking to each piece of equipment and draw up a written declaration of conformity.

2. The manufacturer shall take all measures necessary to ensure that the manufacturing process assures compliance of the manufactured equipment or protective systems with the type as described in the EC-type-examination certificate and with the relevant requirements of the Directive.

3. The manufacturer or his authorised representative shall keep a copy of the declaration of conformity for a period ending at least 10 years after the last piece of equipment was manufactured. Where neither the manufacturer nor his authorized representative is established within the Community, the obligation to keep the technical documentation available shall be the responsibility of the person who places the equipment or protective system on the Community market.

For each piece of equipment manufactured, tests relating to the anti-explosive protection aspects of the product shall be carried out by the manufacturer or on his behalf. The tests shall be carried out under the responsibility of a notified body, chosen by the manufacturer.

On the responsibility of the notified body, the manufacturer shall affix the former's identification number during the manufacturing process.

SCHEDULE 10

Regulation 10

(Annex VII of the ATEX Directive) MODULE: PRODUCT QUALITY ASSURANCE

1. This module describes the procedure whereby the manufacturer who satisfies the obligations of Section 2 ensures and declares that the equipment is in conformity with the type as described in the EC-type-examination certificate. The manufacturer or his authorized representative established within the Community shall affix the CE marking to each product and draw up a written declaration of conformity. The CE marking shall be accompanied by the identification number of the notified body responsible for surveillance as specified in Section 4.

2. The manufacturer shall operate an approved quality system for the final inspection and testing of equipment as specified in Section 3 below and shall be subject to surveillance as specified in Section 4 below.

Quality system

3.—(3.1) The manufacturer shall lodge an application for assessment of his quality system for the equipment and protective systems, with a notified body of his choice.

The application shall include:

- all relevant information for the product category envisaged;
- documentation on the quality system;
- technical documentation on the approved type and a copy of the EC-type-examination certificate.

(3.2) Under the quality system, each piece of equipment shall be examined and appropriate tests as set out in the relevant standard(s) referred to in Article 5 or equivalent tests shall be carried out in order to ensure its conformity with the relevant requirements of the Directive. All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instruments. This quality system documentation must permit a consistent interpretation of the quality programmes, plans, manuals and records.

It shall contain, in particular, an adequate description of:

- the quality objectives and the organizational structure, responsibilities and powers of the management with regard to product quality;
- the examinations and tests which will be carried out after manufacture;
- the means to monitor the effective operation of the quality system;
- quality records, such as inspection reports and test data, calibration data, reports on the qualifications of the personnel concerned, etc.

(3.3) The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in Section 3.2. It shall presume conformity with these requirements in respect of quality systems which implement the relevant harmonized standard.

The auditing team shall have at least one member experienced as an assessor in the product technology concerned. The assessment procedure shall include an assessment visit to the manufacturer's premises.

The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

(3.4) The manufacturer shall undertake to discharge the obligations arising from the quality system as approved and to maintain it in an appropriate and efficient manner.

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The manufacturer or his authorized representative shall inform the notified body which has approved the quality system of any intended updating of the quality system.

The notified body shall evaluate the modifications proposed and decide whether the modified quality system will still satisfy the requirements referred to in Section 3.2 or whether a re-assessment is required.

It shall notify its decision to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

Surveillance under the responsibility of the notified body

4.—(4.1) The purpose of surveillance is to ensure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

(4.2) The manufacturer shall for inspection purposes allow the notified body access to the inspection, testing and storage premises and shall provide it with all necessary information, in particular:

- quality system documentation;
- technical documentation;
- quality records, such as inspection reports and test data, calibration data, reports on the qualifications of the personnel concerned, etc.

(4.3) The notified body shall periodically carry out audits to ensure that the manufacturer maintains and applies the quality system and shall provide an audit report to the manufacturer.

(4.4) Furthermore, the notified body may pay unexpected visits to the manufacturer. At the time of such visits, the notified body may carry out tests or arrange for tests to be carried out in order to check the proper functioning of the quality system, where necessary; it shall provide the manufacturer with a visit report and, if a test has been carried out, with a test report.

5. The manufacturer shall, for a period ending at least 10 years after the last piece of equipment was manufactured, keep at the disposal of the national authorities:

- the documentation referred to in the third indent of Section 3.1;
- the updating referred to in the second paragraph of Section 3.4;
- the decisions and reports from the notified body which are referred to in Section 3.4, last paragraph, Section 4.3 and Section 4.4.

6. Each notified body shall forward to the other notified bodies the relevant information concerning the quality system approvals issued and withdrawn.

SCHEDULE 11

Regulation 10

(Annex VIII of the ATEX Directive)

MODULE: INTERNAL CONTROL OF PRODUCTION

1. This module describes the procedure whereby the manufacturer or his authorized representative established within the Community, who carries out the obligations laid down in Section 2, ensures and declares that the equipment satisfy the requirements of the Directive applicable to it. The manufacturer or his authorized representative established within the Community shall affix the CE marking to each piece of equipment and draw up a written declaration of conformity.

(2) The manufacturer shall establish the technical documentation described in Section 3 and he or his authorized representative established within the Community shall keep it at the disposal of the relevant national authorities for inspection purposes for a period ending at least 10 years after the last piece of equipment was manufactured.

Where neither the manufacturer nor his authorized representative is established within the Community, the obligation to keep the technical documentation available shall be the responsibility of the person who places the equipment on the Community market.

3. Technical documentation shall enable the conformity of the equipment with the relevant requirements of the Directive to be assessed. It shall, to the extent necessary for such assessment, cover the design, manufacture and operation of the product. It shall contain:

- a general description of the equipment,
- conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.,
- descriptions and explanations necessary for the understanding of said drawings and schemes and the operation of the equipment,
- a list of the standards applied in full or in part, and descriptions of the solutions adopted to meet the safety aspects of the Directive where the standards have not been applied,
- results of design calculations made, examinations carried out, etc.,
- test reports.

4. The manufacturer or his authorized representative shall keep a copy of the declaration of conformity with the technical documentation.

5. The manufacturer shall take all measures necessary to ensure that the manufacturing process guarantees compliance of the manufactured equipment with the technical documentation referred to in Section 2 and with the requirements of the Directive applicable to such equipment.

SCHEDULE 12

Regulation 10

(Annex IX of the ATEX Directive) MODULE: UNIT VERIFICATION

1. This module describes the procedure whereby the manufacturer ensures and declares that the equipment or protective system which has been issued with the certificate referred to in Section 2 conforms to the requirements of the Directive which are applicable to it. The manufacturer or his authorized representative in the Community shall affix the CE marking to the equipment or protective system and draw up a declaration of conformity.

2. The notified body shall examine the individual equipment or protective system and carry out the appropriate tests as set out in the relevant standard(s) referred to in Article 5, or equivalent tests, to ensure its conformity with the relevant requirements of the Directive.

The notified body shall affix, or cause to be affixed, its identification number on the approved equipment or protective system and shall draw up a certificate of conformity concerning the tests carried out.

3. The aim of the technical documentation is to enable conformity with the requirements of the Directive to be assessed and the design, manufacture and operation of the equipment or protective system to be understood.

The documentation shall contain:

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- a general description of the product;
- conceptual design and manufacturing drawings and layouts of components, sub-assemblies, circuits, etc.;
- descriptions and explanations necessary for the understanding of said drawings and layouts and the operation of the equipment or protective system;
- a list of the standards referred to in Article 5, applied in full or in part, and descriptions of the solutions adopted to meet the essential requirements of the Directive where the standards referred to in Article 5 have not been applied;
- results of design calculations made, examinations carried out, etc.;
- test reports.

SCHEDULE 13

Regulation 14(1)(a)

(Part B of Annex X of the ATEX Directive)
(Content of the EC declaration of conformity)

The EC declaration of conformity must contain the following elements:

- the name or identification mark and the address of the manufacturer or his authorized representative established within the Community;
- a description of the equipment, protective system, or device referred to in Article 1(2);
- all relevant provisions fulfilled by the equipment, protective system, or device referred to in Article 1(2);
- where appropriate, the name, identification number and address of the notified body and the number of the EC-type-examination certificate;
- where appropriate, reference to the harmonized standards;
- where appropriate, the standards and technical specifications which have been used;
- where appropriate, references to other Community Directives which have been applied;
- identification of the signatory who has been empowered to enter into commitments on behalf of the manufacturer or his authorized representative established within the Community.

SCHEDULE 14

Regulation 15

ENFORCEMENT

Enforcement in relation to relevant products

1. In relation to relevant products—
 - (a) it shall be the duty of the Executive to make adequate arrangements for the enforcement of these Regulations, and accordingly a reference in the provisions applied for the purposes of such enforcement by sub-paragraph (b) below to an “enforcing authority” shall be construed as a reference to the Executive;

- (b) sections 19 to 28(7), 33 to 35(8), 38, 39, 41 and 42 of the 1974 Act shall apply for the purposes of providing for the enforcement of these Regulations and in respect of proceedings for contravention thereof as if—
- (i) references to relevant statutory provisions were references to those sections as applied by this paragraph and to these Regulations;
 - (ii) references to articles, substances, articles and substances, or plant, were references to relevant products;
 - (iii) references to the field of responsibility of an enforcing authority, however expressed, were omitted;
 - (iv) in section 20, subsection (3) were omitted;
 - (v) in section 23, subsections (3), (4) and (6) were omitted;
 - (vi) in section 33—
 - (aa) in subsection (1) the whole of paragraphs (a) to (d) were omitted;
 - (bb) subsection (1A) were omitted;
 - (cc) in subsection (2), the reference to paragraph (d) of subsection (1) were omitted;
 - (dd) subsection (2A) were omitted;
 - (ee) for subsection (3) there were substituted the following:—

“(3) A person guilty of an offence under any paragraph of subsection (1) above not mentioned in subsection (2) above or of an offence under subsection (1)(e) above not falling within that subsection shall be liable—

 - (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
 - (b) on conviction on indictment—
 - (i) in the case of an offence under subsection (1)(g), (j) or (o), to imprisonment for a term not exceeding two years, or a fine, or both; or
 - (ii) in all other cases, to a fine.”; and
 - (ff) subsection (4) were omitted;
 - (vii) in section 34—
 - (aa) paragraphs (a) and (b) were omitted from subsection (1); and

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- (7) In section 22, subsections (1) and (2) were amended and subsection (4) was added by paragraph 2, of Schedule 3 to, and section 36 of, the Consumer Protection Act 1987 (c. 43). There is a modification of the application of section 24 not relevant to these Regulations. Sections 25A and 27A were inserted by paragraphs 3 and 4 respectively, and section 28(1)(a) was amended by paragraph 5, of Schedule 3 to, and section 36 of, 1987 c. 43; section 27 was amended by the repeal of subsection (2) (b) and the word “or” immediately preceding it by section 29(3) and (4) of, and paragraph 10(1) and (2) of Schedule 6 and Schedule 7 to, the Employment Act 1989 (c. 38), and in subsection (3) by section 33(1) of, and paragraph 7(a) of Part II of Schedule 3 to, the Employment Act 1988 (c. 19) and section 29(3) of, and paragraph 10(3) of Schedule 6 to, 1989 c. 38; and in section 28, subsections (3)(c) and (5)(b) were amended by section 190 of, and paragraph 46 of Schedule 25 to, the Water Act 1989 (c. 15), a new subsection (6) was substituted by section 84 of, and paragraph 52 of Part II of Schedule 14 to, the Local Government Act 1985 (c. 51), and new subsections (9) and (10) were added by section 116 of, and paragraph 9 of Schedule 15 to, the Employment Protection Act 1975 (c. 71) and section 21 of, and paragraph 13 of Schedule 6 to, the Norfolk and Suffolk Broads Act 1988 (c. 4) respectively.
- (8) Section 33 was amended in subsection (1) in paragraph (h) by section 36 of, and paragraph 6 of Schedule 3 to, 1987 c. 43, and in paragraph (m) by section 30 of, and Part I of the Schedule to, the Forgery and Counterfeiting Act 1981 (c. 45); in subsection (2) as it applies to England and Wales by section 46 of the Criminal Justice Act 1982 (c. 48); subsection (5) was repealed by section 4(5) of the Offshore Safety Act 1992 (c. 15); and subsection (6) was repealed by section 30 of, and Part I of the Schedule to, 1981 c. 45. There are other amendments to section 33, and there is an amendment to section 34, not relevant to these Regulations.

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- (bb) in subsection (3) for “six months” there were substituted “twelve months”;
and
- (viii) in section 42, subsections (4) and (5) were omitted; and
- (c) sections 36(1) and (2) and 37 shall apply in relation to offences under section 33 as applied by sub-paragraph (b) above.

Forfeiture: England and Wales

2.—(1) An enforcement authority in England and Wales may apply under this paragraph for an order for the forfeiture of any relevant product on the grounds that there has been a contravention in relation thereto of regulation 6, 7 or 8.

(2) An application under this paragraph may be made—

- (a) where proceedings have been brought in a magistrates' court in respect of an offence in relation to some or all of the relevant products under regulation 16 to that court; and
- (b) where no application for the forfeiture of the relevant product has been made under sub-paragraph (a) above, by way of complaint to a magistrates' court.

(3) On an application under this paragraph the court shall make an order for the forfeiture of the relevant products only if it is satisfied that there has been a contravention in relation thereto of regulation 6, 7 or 8.

(4) For the avoidance of doubt it is hereby declared that a court may infer for the purposes of this paragraph that there has been a contravention in relation to any relevant products of regulation 6, 7 or 8 if it is satisfied that that regulation has been contravened in relation to a relevant product which is representative of that relevant product (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(5) Any person aggrieved by an order made under this paragraph by a magistrates' court, or by a decision of such court not to make such an order, may appeal against that order or decision to the Crown Court and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of an order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980⁽⁹⁾).

(6) Subject to sub-paragraph (7) below, where any relevant product is forfeited under this paragraph it shall be destroyed in accordance with such directions as the court may give.

(7) On making an order under this paragraph a magistrates' court may, if it considers it appropriate to do so, direct that the relevant product to which the order relates shall (instead of being destroyed) be released, to such person as the court may specify, on condition that that person—

- (a) does not supply the relevant product to any person otherwise than—
 - (i) to a person who carries on a business of buying relevant products of the same description as the first mentioned product and repairing or reconditioning it; or
 - (ii) as scrap (that is to say, for the value of materials included in the relevant product rather than for the value of the relevant product itself); and
- (b) complies with any order to pay costs or expenses which has been made against that person in the proceedings for the order for forfeiture.

Forfeiture: Scotland

3.—(1) In Scotland a sheriff may make an order for forfeiture of any relevant product in relation to which there has been a contravention of any provision of regulation 6, 7 or 8—

(9) 1980 c. 43.

- (a) on an application by the procurator-fiscal made in the manner specified in section 310 of the Criminal Procedure (Scotland) Act 1975⁽¹⁰⁾; or
- (b) where a person is convicted of any offence in respect of any such contravention, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under sub-paragraph (1)(a) above shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the relevant product to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the relevant product should not be forfeited.

(3) Service under sub-paragraph (2) above shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1975.

(4) Any person upon whom a notice is served under sub-paragraph (2) above and any other person claiming to be the owner of, or otherwise to have an interest in, the relevant product to which an application under this paragraph relates shall be entitled to appear at the hearing of the application to show cause why the relevant product as the case may be should not be forfeited.

(5) The sheriff shall not make an order following an application under sub-paragraph (1)(a) above—

- (a) if any person on whom notice is served under sub-paragraph (2) above does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under sub-paragraph (2) above has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The sheriff shall make an order under this paragraph only if he is satisfied that there has been a contravention in relation to the relevant product of regulation 6, 7 or 8.

(7) For the avoidance of doubt it is declared that the sheriff may infer for the purposes of this paragraph that there has been a contravention in relation to any relevant product of regulation 6, 7 or 8 if he is satisfied that that regulation has been contravened in relation to a relevant product which is representative of that relevant product (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(8) Where an order for the forfeiture of any relevant product is made following an application by the procurator-fiscal under sub-paragraph (1)(a) above, any person who appeared, or was entitled to appear, to show cause why it should not be forfeited may, within twenty-one days of the making of the order, appeal to the High Court by Bill of Suspension on the ground of an alleged miscarriage of justice; and section 452(4)(a) to (e) of the Criminal Procedure (Scotland) Act 1975⁽¹¹⁾ shall apply to an appeal under this sub-paragraph as it applies to a stated case under Part II of that Act.

(9) An order following an application under sub-paragraph (1)(a) above shall not take effect—

- (a) until the end of the period of twenty-one days beginning with the day after the day on which the order is made; or
- (b) if an appeal is made under sub-paragraph (8) above within that period, until the appeal is determined or abandoned.

(10) An order under sub-paragraph (1)(b) shall not take effect—

- (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1975; or
- (b) if an appeal is made within that period, until the appeal is determined or abandoned.

⁽¹⁰⁾ 1975 c. 21. Section 310 was amended by paragraph 53 of Schedule 7, and Schedule 8, to the Criminal Justice (Scotland) Act 1980 (c. 62); there are extensions of section 310 not relevant to these Regulations.

⁽¹¹⁾ A new section 452 was substituted by paragraph 11 of Schedule 3 to 1980 c. 62.

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(11) Subject to sub-paragraph (12) below, relevant products forfeited under this paragraph shall be destroyed in accordance with such directions as the sheriff may give.

(12) If he thinks fit, the sheriff may direct the relevant product to be released to such person as he may specify, on condition that that person does not supply it to any person otherwise than—

- (a) to a person who carries on a business of buying relevant products of the same description as the first-mentioned relevant product and repairing or reconditioning it; or
- (b) as scrap (that is to say, for the value of materials included in the relevant product rather than for the value of the relevant product itself).

Duty of enforcement authority to inform Secretary of State of action taken

4. The enforcement authority shall, where action has been taken by it to prohibit or restrict the placing on the market, the supply or putting into service (whether under these Regulations or otherwise) of any relevant product which bears the CE marking forthwith inform the Secretary of State of the action taken, and the reasons for it, with a view to this information being passed by him to the Commission.

Savings

5. Nothing in these Regulations shall be construed as preventing the taking of any action in respect of any relevant product under the provisions of the 1974 Act.

6. Nothing in these Regulations shall authorise the enforcement authority to bring proceedings in Scotland for an offence.

Interpretation

7. In this Schedule—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974(12);

“the Executive” means the Health and Safety Executive established under section 10 of the 1974 Act; and

“relevant product” means an item of equipment, a protective system, a device or component, as the case may be, to which these Regulations apply.

(12) 1974 c. 37.

SCHEDULE 15

Regulation 20(2)(c)

DISAPPLICATION OF SPECIFIC MINING REGULATIONS(13)

PART I

(Made under the Mines and Quarries Act 1954(14))

(1) Title	(2) Reference	(3) Extent of disapplication
The Woodside Nos 2 and 3 Mine (Diesel Vehicles) Special Regulations 1960	S.I. 1960/1291	Regulations 4 to 6
The Grimethorpe Mine (Diesel Vehicles) Special Regulations 1961	S.I. 1961/2444	Regulations 4 to 6
The Lynemouth Mine (Diesel Vehicles and Storage Battery Vehicles) Special Regulations 1961	S.I. 1961/2445	Regulations 4 to 7
The Calverton Mine (Diesel Vehicles) Special Regulations 1962	S.I. 1962/931	Regulations 4 to 6
The Brightling Mine (Diesel Vehicles) Special Regulations 1962	S.I. 1962/1094	Regulations 5 to 7
The Easington Mine (Diesel Vehicles) Special Regulations 1962	S.I. 1962/1676	Regulations 4 to 6
The Rufford Mine (Diesel Vehicles) Special Regulations 1962	S.I. 1962/2059	Regulations 4 to 6
The Trelewis Drift Mine (Diesel Vehicles) Special Regulations 1962	S.I. 1962/2114	Regulations 4 to 6
The Wharnccliffe Woodmoor 4 and 5 Mine (Diesel Vehicles) Special Regulations 1962	S.I. 1962/2193	Regulations 4 to 6
The Seaham Mine (Diesel Vehicles) Special Regulations 1962	S.I. 1962/2512	Regulations 4 to 6

(13) The regulations specified in the third column to this Schedule are also revoked, with effect from 1st July 2003, by regulation 1(2) of and Schedule 1 to these Regulations.

(14) [1954 c. 70.](#)

Status: This is the original version (as it was originally made).

(1) Title	(2) Reference	(3) Extent of disapplication
The Dawdon Mine (Diesel Vehicles) Special Regulations 1963	S.I. 1963/118	Regulations 4 to 6
The Thoresby Mine (Diesel Vehicles) Special Regulations 1963	S.I. 1963/825	Regulations 4 to 6
The Westoe Mine (Diesel Vehicles) Special Regulations 1963	S.I. 1963/1096	Regulations 4 to 6
The Silverwood Mine (Diesel Vehicles) Special Regulations 1963	S.I. 1963/1618	Regulations 4 to 6
The Prince of Wales Mine (Diesel Vehicles) Special Regulations 1964	S.I. 1964/539	Regulations 4 to 6
The Cwmgwili Mine (Diesel Vehicles) Special Regulations 1964	S.I. 1964/1225	Regulations 4 to 6
The Wearmouth Mine (Diesel Vehicles) Special Regulations 1964	S.I. 1964/1476	Regulations 4 to 6
The Bevercotes Mine (Diesel Vehicles) Special Regulations 1965	S.I. 1965/1194	Regulations 4 to 6
The Ellington Mine (Diesel Vehicles and Storage Battery Vehicles) Special Regulations 1967	S.I. 1967/956	Regulations 4 to 7
The Prince of Wales Mine (Captive Rail Diesel Locomotives) Special Regulations 1969	S.I. 1969/1377	Regulation 4
The Boulby Mine (Storage Battery Locomotives) Special Regulations 1972	S.I. 1972/472	Regulations 4 to 8
The Elsecar Main Mine (Diesel Vehicles) Special Regulations 1974	S.I. 1974/710	Regulations 4 to 6

PART II

(Made under the Mines and Quarries Act 1954 and
the Health and Safety at Work etc. Act 1974(15))

(1) Title	(2) Reference	(3) Extent of disapplication
The Rixey Park Mine (Storage Battery Locomotives) Special Regulations 1974	S.I. 1974/1866	Regulations 4 to 8

PART III

Made under the Health and Safety at Work etc. Act 1974)

(1) Title	(2) Reference	(3) Extent of disapplication
The Markham Mine (Diesel Vehicles) Regulations 1976	S.I. 1976/1734	Regulations 4 to 6
The Bentinck Mine (Diesel Engined Stone Dusting Machine) Regulations 1976	S.I. 1976/2046	Regulations 5 to 7
The Thoresby Mine (Cable Reel Load-Haul-Dump Vehicles) Regulations 1978	S.I. 1978/119	Regulations 4 to 9
The Trelewis Drift Mine (Diesel Vehicles) Regulations 1978	S.I. 1978/1376	Regulations 4 to 6
The Boulby Mine (Diesel Vehicles) Regulations 1979	S.I. 1979/1532	Regulations 5 to 8
The Harworth Mine (Cable Reel Load-Haul-Dump Vehicles) Regulations 1980	S.I. 1980/1474	Regulations 4 to 9
The Point of Ayr Mine (Diesel Vehicles) Regulations 1980	S.I. 1980/1705	Regulations 5 and 6