

1990 No. 284

HEALTH AND SAFETY

**Electrical Equipment for Explosive Atmospheres
(Certification) Regulations (Northern Ireland) 1990**

Made 30th July 1990

Coming into operation 3rd September 1990

The Department of Economic Development, being a Department 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 exercise of the powers conferred on it by that section, and of every other power enabling it in that behalf, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Electrical Equipment for Explosive Atmospheres (Certification) Regulations (Northern Ireland) 1990, and shall come into operation on 3rd September 1990.

Interpretation

2.—(1) In these Regulations—

“certification body” shall be construed in accordance with regulation 3;

“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);

(a) S.I. 1972/1811

(b) 1972 c. 68: section 2 is subject to Schedule 2 to that Act and is to be read with S.I. 1984/703 (N.I. 3) and S.R. 1984 No. 253

(c) O.J. No. L43, 20.2.79, p. 20

(d) O.J. No. L31, 2.2.84, p. 19

(e) O.J. No. L311, 17.11.88, p. 46

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

“the Gassy Mines Directive” means Council Directive No. 82/130/EEC(b) 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(c);

“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;

“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;

“manufacturer” means a manufacturer of electrical equipment; and

“Member State” means a Member State of the European Communities other than the United Kingdom.

(2) The Interpretation Act (Northern Ireland) 1954(d) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Appointment of certification body

3. The Department of Economic Development (hereinafter referred to as “the certification body”) is hereby appointed for the following purposes, that is to say:—

- (a) of assessing and testing electrical equipment to determine whether it conforms to the appropriate harmonised standards, and of issuing certificates of conformity;
- (b) of assessing and testing electrical equipment 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 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; and
- (d) of doing such other things as may be required or permitted by or in connection with these Regulations.

(a) O.J. No. L24, 30.1.76, p. 45

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

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

(d) 1954 c. 33 (N.I.)

Certificates of conformity

4.—(1) A manufacturer may apply in writing to the certification body for a certificate of conformity attesting that the electrical equipment which is the subject of the application conforms to the appropriate harmonised standards.

(2) An application under paragraph (1) 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.

(3) The certification body shall on receipt of—

- (a) an application for a certificate of conformity in relation to electrical equipment; and
- (b) such fee as may be agreed between itself and the manufacturer of that equipment or the written agreement of that manufacturer to pay that fee,

carry out or cause to be carried out such checks, examinations and tests as are required for it to determine whether the electrical equipment conforms to the appropriate harmonised standards.

(4) If, as a result of the checks, examinations and tests carried out on any electrical equipment in accordance with paragraph (3), the certification body determines that the equipment conforms to the appropriate harmonised standards, it shall issue to the manufacturer a certificate of conformity attesting that it does so, 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 may apply in writing to the certification body for an inspection certificate attesting that the electrical equipment to which the application relates offers a degree of safety at least equivalent to that of the appropriate harmonised standards.

(2) An application under paragraph (1) 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.

(3) The certification body shall, on receipt of—

- (a) an application for an inspection certificate in relation to electrical equipment; and
- (b) such fees as may be agreed between itself and the manufacturer of that equipment, or the written agreement of that manufacturer to pay that fee,

carry out or cause to be carried out such checks, examinations and tests as are required for it to determine whether the electrical equipment offers a degree of safety at least equivalent to that of the appropriate harmonised standards.

(4) If, as a result of the checks, examinations and tests carried out on any electrical equipment in accordance with paragraph (3), the certification body determines that the equipment offers a degree of safety at least equivalent to that of the appropriate 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 each Member State 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 for proceedings in accordance with Article 7 of that Directive, or, in the case of electrical equipment for use in mines, to the Committee referred to in Article 6 of the Gassy Mines Directive for proceedings 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), the certification body, after considering any comments submitted in accordance with the procedures specified in that paragraph, and if the results of any additional inspections requested are satisfactory, 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 the certification body determines that it cannot issue a certificate of conformity or an inspection certificate in respect of any electrical equipment, it shall forthwith send the manufacturer of that equipment a notice in writing of that determination.

(2) The certification body may withdraw a certificate of conformity or inspection certificate relating to any electrical equipment if it has reason to believe that—

- (a) the certificate should not have been issued;
- (b) the conditions to which the certificate is subject have not been complied with within such period (if any) as the certification body has reasonably specified;
- (c) the electrical equipment distributed by the manufacturer in pursuance of the certificate is not in conformity with the certified design; or
- (d) the manufacturer of the electrical equipment to which the certificate relates has, without reasonable cause, contravened the requirements of regulation 10 (access to place of manufacture).

(3) Where the certification body decides, under paragraph (2), to withdraw a certificate of conformity or an inspection certificate relating to any electrical equipment, it shall forthwith send the manufacturer of that equipment a notice in writing of that decision.

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

- (a) state in detail the grounds on which the determination or decision, as the case may be, of the certification body is based; and
- (b) inform the manufacturer of his right under regulation 7 to request that body to review its determination or decision, and of the time limit for making such a request under paragraph (1) of that regulation.

Review of determinations or decisions

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

- (a) determination that it cannot issue a certificate of conformity or an inspection certificate;
- (b) decision to stipulate any condition subject to which such a certificate was issued; or
- (c) decision to withdraw a certificate in accordance with regulation 6(2), may within 60 days of receiving notice thereof apply to the certification body for a review of its determination or decision, as the case may be, in accordance with the procedure set out in regulation 8.

(2) Paragraph (1) shall not apply to any refusal by the certification body to issue an inspection certificate for any electrical equipment, if the sole reason for that refusal is that the Committee referred to in regulation 5(5) had not reached a favourable opinion in relation to that equipment.

Procedure for review

8.—(1) An application for review under regulation 7(1) shall be made in writing to the certification body 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 referred to in regulation 6(1) or, as appropriate, in regulation 6(3).
- (2) On an application for review under this regulation the certification body 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 certification body may, in such cases as it considers appropriate to do so, having regard to the nature of the questions which appear to it to arise, direct that an application for review under this regulation shall be heard, but not determined, on its behalf by a person appointed by it 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 documents and papers that he took into consideration in preparing his report) to the certification body. After considering the report and all relevant documents and papers, the certification body shall determine the review.

(5) On an application for review, the certification body shall, if it determines to find in favour of the manufacturer making that application,

- (a) issue or re-issue the appropriate certificate subject to such conditions as it may reasonably stipulate; or
- (b) vary or revoke any condition subject to which a subsisting certificate of conformity or inspection certificate was issued, as the case may be.

(6) A copy of the determination (and, where appropriate, of the report) shall be sent to the manufacturer who made the application to which it relates.

(7) The certification body may pay to any person appointed to hear on its behalf an application for review under this regulation, such remuneration and allowances as it may, with the consent of the Department of Finance and Personnel, determine.

Notification to the European Commission and to Member States

9.—(1) The certification body shall notify the European Commission and each Member State that it is the body appointed under regulation 3 for the purposes of that regulation.

(2) The certification body shall send to each Member State a copy of the main points in any certificate of conformity or inspection certificate issued by it 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 the 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 each Member State, stating the grounds for its decision.

Access to place of manufacture

10. The manufacturer of electrical equipment to which an application for a certificate of conformity or an inspection certificate relates, shall allow the certification body, its servants and agents, reasonable access to the place where the equipment is manufactured—

- (a) if such access is essential to assist the proper determination of the application; or
- (b) for the purposes specified in regulation 3(c).

Use of the distinctive Community mark

11.—(1) Where a certificate of conformity or an inspection certificate is in force in relation to any electrical equipment, 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 the Framework Directive; and
- (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) When electrical equipment is supplied to any person, the manufacturer shall ensure that, where required by the certificate of conformity or inspection certificate relating to it, it is accompanied by instructions defining the special conditions governing its use.

(3) The manufacturer shall not affix on 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) A person shall not 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 Article 17 of the Health and Safety at Work (Northern Ireland) Order 1978(a) and the provisions of that Order as regards enforcement and offences shall apply to those paragraphs.

Sealed with the Official Seal of the Department of Economic Development on 30th July 1990.

(L.S.)

Suzanna Cooper

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations implement, as respects Northern Ireland, Council Directives No. 76/117/EEC (O.J. No. L24, 30.1.76, p. 45) concerning electrical equipment for use in potentially explosive atmospheres; 79/196/EEC (O.J. 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 (O.J. No. L31, 2.2.84, p. 19) and 88/571/EEC (O.J. No. L311, 17.11.88, p. 46); and Council Directive No. 82/130/EEC (O.J. 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 (O.J. No. L20, 26.1.88, p. 28).

The Regulations—

- (a) appoint the Department of Economic Development to be the certification and surveillance body for the purposes of these Regulations (regulation 3);
- (b) enable a manufacturer to apply to the certification body for a certificate of conformity attesting that the electrical equipment which is 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 where appropriate, to issue to the manufacturer a certificate of conformity (regulation 4);
- (c) enable a manufacturer to apply to the certification body 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; 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 it to follow the specified procedure before issuing an inspection certificate to the manufacturer (regulation 5);
- (d) require the 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 certification body for a review of its decision to refuse to issue a certificate of conformity or an inspection certificate; to withdraw such a certificate or to issue him with a certificate subject to any condition whereby he is aggrieved (regulation 7);
- (f) provide the procedure for a review (regulation 8);

- (g) require the certification body to notify the European Commission and Member States that it is the certification and surveillance body for the purposes of these Regulations (regulation 9);
- (h) require the manufacturer who has applied for a certificate of conformity or an inspection certificate to allow the certification body, its servants or agents, 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 after the application has been granted (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 its use, if so required by the certificate of conformity or the inspection certificate. It is 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). Such an offence is punishable on summary conviction by a fine not exceeding £2,000 or a conviction on indictment to a fine.