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STATUTORY RULES OF NORTHERN IRELAND

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**2017 No. 90**

**HEALTH AND SAFETY**

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

*Made* - - - - *15th June 2017*  
*Coming into operation* *10th July 2017*

The Department for the Economy <sup>M1</sup> makes the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A <sup>M2</sup> of Schedule 2 to, the European Communities Act 1972 (“the 1972 Act”) <sup>M3</sup>.

The Department is designated <sup>M4</sup> for the purposes of section 2(2) of the 1972 Act in relation to measures relating to equipment and protective systems intended for use in potentially explosive atmospheres.

The Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Department that it is expedient for certain references to provisions of EU instruments to be construed as references to those provisions as amended from time to time.

**Marginal Citations**

- M1** Formerly the Department of Enterprise, Trade and Investment; *see* 2016 c. 5, **section 1(3)**; that Department was formerly the Department of Economic Development; *see* S.I. 1999/283 (N.I. 1), **Article 3(5)**; that Department was formerly the Department of Manpower Services, *see* S.I. 1982/846 (N.I. 11), **Article 3**
- M2** Paragraph 1A of Schedule 2 was inserted by section 28 of the **Legislative and Regulatory Reform Act 2006** (c. 51) and amended by Part 1 of the Schedule to the **European Union (Amendment) Act 2008** (c. 7)
- M3** 1972 c. 68; the enabling powers conferred by section 2(2) were extended by virtue of section 1 of the **European Economic Area Act 1993** (c. 51). Section 2(2) was further amended by section 27(1) of the **Legislative and Regulatory Reform Act 2006** (c. 51) and by Part 1 of the Schedule to the **European Union (Amendment) Act 2008** (c. 7)
- M4** S.I. 1995/751

## PART 1

### PRELIMINARY

#### Citation and commencement

1. These Regulations may be cited as the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 and shall come into operation on 10th July 2017 (“the commencement date”).

#### Interpretation

2.—(1) In these Regulations—

“the 1978 Order” means the Health and Safety at Work (Northern Ireland) Order 1978 <sup>M5</sup>;

“the 1994 Directive” means Directive 94/9/EC of the European Parliament and of the Council on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres <sup>M6</sup>;

“the 1996 Regulations” means the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996 <sup>M7</sup>;

“accreditation certificate” means a certificate, issued by the United Kingdom Accreditation Service <sup>M8</sup> or a national accreditation body in another [F1relevant state], attesting that a conformity assessment body meets the notified body requirements;

“ATEX Directive” means Directive 2014/34/EU of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres (recast) <sup>M9</sup>;

“attestation of conformity” means a declaration of conformity required to be drawn up in accordance with regulation 7(3) (EU declaration of conformity and CE marking);

“authorised representative” means a person appointed in accordance with regulation 17(1);

“CE marking” means a marking which takes the form set out in Annex II to RAMS (as amended from time to time);

“competent national authority” means an authority having responsibility for enforcing the law of a [F2relevant state] which implements the ATEX Directive;

“component” means any item essential to the safe functioning of equipment and protective systems but with no autonomous function;

“conformity assessment” means the process demonstrating whether the essential health and safety requirements relating to a product have been fulfilled;

“conformity assessment body” means a body that performs conformity assessment activities, including calibration, testing, certification and inspection;

“distributor” means any person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market;

“economic operator” means a manufacturer, authorised representative, importer or distributor;

“equipment” means machines, apparatus, fixed or mobile devices, control components and their instrumentation and detection or prevention systems which, separately or jointly, are intended for the generation, transfer, storage, measurement, control and conversion of energy or the processing of material or both and which are capable of causing an explosion through their own potential sources of ignition;

“equipment category” means the classification of equipment, within each equipment-group, specified in Annex I to the ATEX Directive (as amended from time to time), determining the requisite level of protection to be ensured;

“equipment-group I” means equipment intended for use in underground parts of mines, and in those parts of surface installations of such mines, liable to be endangered by firedamp or combustible dust or both, comprising equipment categories M 1 and M 2 as set out in Annex I to the ATEX Directive (as amended from time to time);

“equipment-group II” means equipment intended for use in other places liable to be endangered by explosive atmospheres, comprising equipment categories 1, 2 and 3 as set out in Annex I to the ATEX Directive (as amended from time to time);

“essential health and safety requirements” means the requirements set out in Schedule 1 (Essential health and safety requirements);

“EU declaration of conformity” means a declaration of conformity required to be drawn up in accordance with regulation 7(1)(a) (EU declaration of conformity and CE marking);

“European Commission” means the Commission of the European Union;

“the Executive” means the Health and Safety Executive for Northern Ireland;

“explosive atmosphere” means a mixture with air, under atmospheric conditions, of flammable substances in the form of gases, vapours, mists or dusts in which, after ignition has occurred, combustion spreads to the entire unburned mixture;

“harmonised standard” has the meaning set out in point 1(c) of Article 2 of Regulation (EU) 1025/2012 of the European Parliament and of the Council on European standardisation<sup>M10</sup> (as amended from time to time);

“importer” means any person who—

- (a) is established within the [<sup>F3</sup>relevant market] ; and
- (b) places a product from a [<sup>F4</sup>market outside the relevant market on the relevant] market;

“intended use” means the use of a product prescribed by the manufacturer by assigning the equipment to a particular equipment-group and category or by providing all the information which is required for the safe functioning of a protective system, device or component;

“make available on the market” means any supply of a product for distribution, consumption or use on the [<sup>F5</sup>relevant] market in the course of a commercial activity, whether in return for payment or free of charge;

“manufacturer” means a person who—

- (a) manufactures a product, or has a product designed or manufactured; and
- (b) markets that product—
  - (i) under that person's name or trade mark; or
  - (ii) uses such product for that person's own purposes;

“market surveillance authority” has the meaning set out in regulation 51 (Designation of market surveillance authority);

“national accreditation body” has the meaning set out in point 11 of Article 2 of RAMS (as amended from time to time);

“notified body requirements” means the requirements set out in Schedule 2 (Notified body requirements);

“Official Journal” means the Official Journal of the European Union;

“place on the market” means make a product available on the [<sup>F6</sup>relevant] market for the first time;

“potentially explosive atmosphere” means an atmosphere which could become explosive due to local and operational conditions;

[<sup>F7</sup>“product” means a product to which these Regulations apply, in accordance with regulation 3;]

“protective systems” means devices other than components of equipment which are intended to halt incipient explosions immediately or to limit the effective range of an explosion or both, and which are separately made available on the market for use as autonomous systems;

“putting into service” means the first use of a product by an end-user within the [<sup>F8</sup>relevant] market, for the purposes for which it was intended;

“RAMS” means Regulation (EC) 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93<sup>M11</sup>;

“recall” means taking any measure aimed at achieving the return of a product that has already been made available to the end-user;

“relevant conformity assessment procedure” means a conformity assessment procedure referred to in regulation 39 (Conformity assessment procedures);

“relevant economic operator” means, in relation to a product, an economic operator with obligations in respect of that product under Part 2;

[<sup>F9</sup>“relevant market” means—

- (a) the market in Northern Ireland; and
- (b) the markets of the EEA states;

“relevant state” means—

- (a) Northern Ireland; or
- (b) any EEA state;]

“technical documentation” has the meaning given in regulation 6 (Technical documentation and conformity assessment);

“technical specification” means a document that prescribes technical requirements to be fulfilled by a product; <sup>F10</sup>...

[<sup>F11</sup>“UK(NI) indication” means the marking in the form set out in Schedule 1 to the Product Safety and Metrology etc. (Amendment etc.) (UK(NI) Indication) (EU Exit) Regulations 2020;

“United Kingdom Accreditation Service” means a company limited by guarantee incorporated in England and Wales under number 03076190; and]

“withdraw” when used in relation to a product, means taking any measure aimed at preventing a product in the supply chain from being made available on the market.

(2) In these Regulations, a reference to a product being “in conformity with Part 2” means that—

- (a) the product is in conformity with the essential health and safety requirements; and
- (b) each relevant economic operator has complied with the obligations imposed on them under Part 2 which shall be satisfied at or before the time at which they make the product available on the market.

(3) In these Regulations (except in Part 4 (Notification of conformity assessment bodies) and Schedules 2 (Notified body requirements) and 3 (Operational obligations of notified bodies)), “notified body” means—

- (a) a notified body within the meaning set out in regulation 42 (Notified bodies); or
  - (b) a notified body under the laws of any other [<sup>F12</sup>relevant state] which implement the ATEX Directive.
- (4) In regulations 10(1) and 24(1) (Monitoring) and Schedule 1 (Essential health and safety requirements), “risk” means a risk which could arise from lawful and readily predictable human behaviour.
- (5) In the other provisions of these Regulations, “risk” means a risk—
- (a) which could arise from lawful and readily predictable human behaviour; and
  - (b) which may result in harm to any of the following interests—
    - (i) health and safety of persons, in particular workers;
    - (ii) domestic animals; or
    - (iii) property.
- <sup>F13</sup>(6) .....
- (7) The Interpretation Act [<sup>F14</sup>1978]<sup>M12</sup> shall apply to these Regulations <sup>F15</sup>....

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|------------|---|
| <b>F1</b>  | Words in reg. 2(1) substituted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), <b>3(1)(a)</b>      |
| <b>F2</b>  | Words in reg. 2(1) substituted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), <b>3(1)(b)</b>      |
| <b>F3</b>  | Words in reg. 2(1) substituted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), <b>3(1)(c)(i)</b>   |
| <b>F4</b>  | Words in reg. 2(1) substituted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), <b>3(1)(c)(ii)</b>  |
| <b>F5</b>  | Word in reg. 2(1) substituted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), <b>3(1)(d)(i)</b>    |
| <b>F6</b>  | Word in reg. 2(1) substituted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), <b>3(1)(d)(ii)</b>   |
| <b>F7</b>  | Words in reg. 2(1) inserted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), <b>3(1)(e)</b>         |
| <b>F8</b>  | Word in reg. 2(1) substituted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), <b>3(1)(d)(iii)</b>  |
| <b>F9</b>  | Words in reg. 2(1) inserted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), <b>3(1)(f)</b>         |
| <b>F10</b> | Word in reg. 2(1) omitted (10.8.2023) by virtue of The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), <b>3(1)(g)</b> |
| <b>F11</b> | Words in reg. 2(1) inserted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), <b>3(1)(h)</b>         |

- F12** Words in reg. 2(3)(b) substituted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), **3(2)**
- F13** Reg. 2(6) omitted (10.8.2023) by virtue of The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), **3(3)**
- F14** Word in reg. 2(7) substituted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), **3(4)(a)**
- F15** Words in reg. 2(7) omitted (10.8.2023) by virtue of The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), **3(4)(b)**

#### Marginal Citations

- M5** S.I. 1978/1039 (N.I. 9)
- M6** O.J. L 100, 19.4.1994, p. 1
- M7** S.R. 1996 No. 247, amended by S.R. 1998 No. 77, S.R. 1999 No. 125 and S.R. 2008 No. 422
- M8** a company limited by guarantee incorporated in England and Wales under number 03076190
- M9** O.J. L 96, 29.3.2014, p. 309
- M10** O.J. L 316, 14.11.2012, p.12
- M11** O.J. L 218, 13.8.2008, p.30
- M12** 1954 c. 33 (N.I.), as amended by S.I. 1999/663, **Schedule 1 paragraph 9**

#### Scope

- 3.—(1)** These Regulations apply to products which—
- (a) fall within the meaning of “product” in paragraph (2); and
  - (b) are not excluded by paragraph (3).
- (2) A “product” means—
- (a) equipment and protective systems intended for use in potentially explosive atmospheres;
  - (b) safety devices, controlling devices and regulating devices intended for use outside potentially explosive atmospheres but required for or contributing to the safe functioning of equipment and protective systems with respect to the risks of explosion; and
  - (c) components intended to be incorporated into equipment and protective systems referred to in sub-paragraph (a).
- (3) The following products are excluded from the definition in paragraph (2)—
- (a) medical devices intended for use in a medical environment;
  - (b) equipment and protective systems where the explosion hazard results exclusively from the presence of explosive substances or unstable chemical substances;
  - (c) equipment intended for use in domestic and non-commercial environments where potentially explosive atmospheres may only rarely be created, solely as a result of the accidental leakage of fuel gas;
  - (d) personal protective equipment covered by <sup>F16</sup>Regulation (EU) 2016/425 of the European Parliament and of the Council of 9 March 2016 on personal protective equipment and repealing Council Directive 89/686/EEC ;
  - (e) seagoing vessels and mobile offshore units together with equipment on board such vessels or units;

- (f) means of transport (other than vehicles intended for use in a potentially explosive atmosphere), including vehicles and their trailers intended solely for transporting passengers by air or by road, rail or water networks and means of transport in so far as such means are designed for transporting goods by air, by public road or rail networks or by water;
- (g) the equipment covered by Article 346(1)(b) of the Treaty on the Functioning of the European Union; and
- (h) products which have been placed on the market before the commencement date.

**F16** Words in reg. 3(3)(d) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **3(5)**

### **Exceptions for trade fairs, exhibitions and demonstrations**

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

- (a) the product is not in conformity with Part 2; and
- (b) the product is not available for sale until brought into conformity with Part 2.

## **PART 2**

### **OBLIGATIONS OF ECONOMIC OPERATORS**

#### **CHAPTER 1**

#### **MANUFACTURERS**

### **Design and manufacture in accordance with essential health and safety requirements**

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

### **Technical documentation and conformity assessment**

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

- (a) carry out the relevant conformity assessment procedure or have a relevant conformity assessment procedure carried out; and
- (b) draw up the technical documentation referred to—
  - (i) for a product in respect of which the conformity assessment procedure in regulation 39(1)(a) is being carried out, in point 3(c) of Module B of Annex III to the ATEX Directive (as amended from time to time);
  - (ii) for a product in respect of which the conformity assessment procedure in regulation [F1739(1)(b)(i)] is being carried out, in point 3(c) of Module B of Annex III to the ATEX Directive (as amended from time to time);

- (iii) for a product in respect of which the conformity assessment procedure in regulation [F18]39(1)(b)(ii) or] 39(1)(c) is being carried out, in point 2 of Module A of Annex VIII to the ATEX Directive (as amended from time to time);
- (iv) for a product in respect of which the conformity assessment procedure in regulation 39(1)(d) is being carried out, in point 2 of Module G of Annex IX to the ATEX Directive (as amended from time to time);

- F17** Word in reg. 6(b)(ii) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **4(1)(a)**
- F18** Words in reg. 6(b)(iii) inserted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **4(1)(b)**

### EU declaration of conformity and CE marking

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

- (a) draw up a declaration of conformity in accordance with regulation 40 (EU declaration of conformity); and
  - (b) affix the CE marking in accordance with regulation 41 (CE marking).
- (2) The manufacturer shall keep the EU declaration of conformity up-to-date.
- (3) Where the conformity of a component with the essential health and safety requirements has been demonstrated by a relevant conformity assessment procedure, the manufacturer shall, before placing the component on the market, draw up a written attestation of conformity in accordance with regulation [F19]39(3)(b)] (Conformity assessment procedures).
- (4) Subject to paragraph (5), before placing a product on the market, the manufacturer shall ensure that each product is accompanied by a copy of the EU declaration of conformity or attestation of conformity as appropriate.
- (5) Where a large number of products are delivered to a single user, the batch or consignment may be accompanied by a single copy of the EU declaration or attestation of conformity as appropriate.
- (6) Where a product is subject to more than one EU instrument requiring a [F20]an EU declaration] of conformity to be drawn up, the manufacturer shall draw up a single [F21]EU] declaration of conformity, which—
- (a) identifies the EU instruments; and
  - (b) includes references to the publication of those EU instruments in the Official Journal.

- F19** Word in reg. 7(3) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **4(2)(a)**
- F20** Words in reg. 7(6) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **4(2)(b)(i)**
- F21** Word in reg. 7(6) inserted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **4(2)(b)(ii)**



### **Retention of technical documentation and EU declaration of conformity**

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

### **Compliance procedures for series production**

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

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

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

### **Monitoring**

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

- (a) carry out sample testing of a product manufactured by the manufacturer made available on the market;
- (b) investigate complaints that a product manufactured by the manufacturer is not in conformity with Part 2; and
- (c) keep distributors informed of any actions carried out under sub-paragraphs (a) and (b).

(2) A manufacturer shall keep a register of—

- (a) complaints that a product is not in conformity with Part 2;
- (b) products which are found not to be in conformity with Part 2; and
- (c) product recalls.

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

### **Labelling and packaging of products**

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

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

### **Labelling and packaging of products, other than components**

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

- (a) bears the specific marking of explosion protection as referred to at paragraph 5(1)(f) of Schedule 1; and
- (b) where applicable, bears the other markings and information referred to at paragraph 5 of Schedule 1.

### Information identifying manufacturer

- 13.—(1) Before placing a product on the market, a manufacturer shall indicate on the product—
- (a) the name, registered trade name or registered trade mark of the manufacturer; and
  - (b) a postal address at which the manufacturer can be contacted.
- (2) Where it is not possible to indicate the information specified in paragraph (1) on the product, the manufacturer shall indicate that information—
- (a) on the product packaging; or
  - (b) in a document accompanying the product.
- (3) The information specified in paragraph (1) shall be in a language which can be easily understood by end-users and the competent national authority in the [<sup>F22</sup>relevant state] in which it is to be made available to such end-users.

**F22** Words in reg. 13(3) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **4(3)**

### Instructions and safety information

- 14.—(1) When placing a product on the market, a manufacturer shall ensure that it is accompanied by instructions and safety information in a language which can be easily understood by end-users in the [<sup>F23</sup>relevant state] in which it is to be made available on the market.
- (2) The instructions and safety information referred to in paragraph (1) and any labelling shall be clear and understandable.
- (3) Where the [<sup>F24</sup>relevant state] referred to in paragraph (1) is [<sup>F25</sup>Northern Ireland], the language referred to in that paragraph shall be English.

**F23** Words in reg. 14(1) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **4(3)**

**F24** Words in reg. 14(3) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **4(3)**

**F25** Words in reg. 14(3) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **4(4)**

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

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

(2) Where the product presents a risk, the manufacturer shall immediately inform the market surveillance authority, and the competent national authorities of any other [<sup>F26</sup>relevant state] in which the manufacturer made the product available on the market, of the risk, giving details of—

- (a) the respect in which the product is considered not to be in conformity with Part 2; and
- (b) any corrective measures taken.

**F26** Words in reg. 15(2) substituted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), 4(3)

### **Provision of information and cooperation**

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

- (a) in paper or electronic form; and
- (b) in a language which can be easily understood by the market surveillance authority.

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

- (a) evaluate a product in accordance with regulation 55 (Evaluation of products presenting a risk);
- (b) eliminate the risks posed by a product which the manufacturer has placed on the market.

### **Authorised representatives**

**17.**—(1) A manufacturer may, by written mandate, appoint a person established in [<sup>F27</sup>a relevant state] as their authorised representative to perform specified tasks on the manufacturer's behalf.

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

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

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

- (a) perform the manufacturer's obligations under regulation 8 (Retention of technical documentation and EU declaration of conformity); and
- (b) perform the manufacturer's obligations under regulation 16 (Provision of information and cooperation);

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

**F27** Words in [reg. 17\(1\)](#) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **4(5)**

## CHAPTER 2

### IMPORTERS

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

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

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

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

- (a) a relevant conformity assessment procedure has been carried out by the manufacturer;
- (b) the manufacturer has drawn up the technical documentation;
- (c) the product—
  - (i) bears the CE marking where applicable;
  - (ii) is accompanied by the EU declaration of conformity or the attestation of conformity as appropriate; and
  - (iii) is accompanied by the required documents; and
- (d) the manufacturer has complied with the requirements set out in regulation 11 (Labelling and packaging of products), regulation 12 (Labelling and packaging of products, other than components) and regulation 13 (Information identifying manufacturer).

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

- (a) regulation 11(2) (Labelling and packaging of products);
- (b) regulation 13(2)(b) (Information identifying manufacturer);
- (c) regulation 14(1) (Instructions and safety information).

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

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

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

#### **Information identifying importer**

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

- (a) the name, registered trade name or registered trade mark of the importer; and
- (b) a postal address at which the importer can be contacted.

(2) The information specified in paragraph (1) shall be in a language which can be easily understood by end-users and by the competent national authority in the [F28relevant state] in which it is to be made available to end-users.

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

- (a) on the packaging; or
- (b) in a document accompanying the product.

**F28** Words in reg. 21(2) substituted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), 4(3)

**Modifications etc. (not altering text)**

**C1** Reg. 21 modified (temp.) by S.I. 2019/392, reg. 6 (as inserted (10.9.2019) by The Product Safety, Metrology and Mutual Recognition Agreement (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1246), reg. 1(2)(4), 2(3) (with reg. 18))

**Instructions and safety information**

**22.**—(1) When placing a product on the market, an importer shall ensure that it is accompanied by instructions and safety information in a language which can be easily understood by end-users in the [F29relevant state] in which the product is to be made available.

(2) Where the [F30relevant state] referred to in paragraph (1) is [F31Northern Ireland], the language referred to in that paragraph shall be English.

**F29** Words in reg. 22(1) substituted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), 4(3)

**F30** Words in reg. 22(2) substituted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), 4(3)

**F31** Words in reg. 22(2) substituted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), 4(4)

**Storage and transport**

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

**Monitoring**

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

- (a) carry out sample testing of a product made available by the importer on the market;
- (b) investigate complaints that a product placed on the market by the importer is not in conformity with Part 2; and
- (c) keep distributors informed of actions carried out under sub-paragraphs (a) and (b).

- (2) An importer shall keep a register of—
- (a) complaints that a product is not in conformity with Part 2;
  - (b) products which are found not to be in conformity with Part 2; and
  - (c) product recalls.

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

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

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

- (a) bring the product into conformity;
- (b) withdraw the product; or
- (c) recall the product.

(2) Where the product presents a risk, the importer shall immediately inform the market surveillance authority, and the competent national authorities of any other [<sup>F32</sup>relevant state] in which the importer made the product available on the market, of the risk, giving details of—

- (a) the respect in which the product is considered not to be in conformity with Part 2; and
- (b) any corrective measures taken.

**F32** Words in reg. 25(2) substituted (10.8.2023) by The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861), regs. 1(b), 4(3)

### **Provision of information and cooperation**

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

- (a) in paper or electronic form; and
- (b) in a language which can be easily understood by the market surveillance authority.

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

- (a) evaluate a product in accordance with regulation 55 (Evaluation of a product presenting a risk);
- (b) eliminate the risks posed by the product which the importer has placed on the market.

### **Retention of technical documentation and EU declaration of conformity**

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

- (a) a copy of the EU declaration of conformity or, where applicable, the attestation of conformity; and
- (b) the technical documentation.

## CHAPTER 3 DISTRIBUTORS

### **Duty to act with due care**

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

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

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

- (a) the product—
  - (i) bears a CE marking where applicable;
  - (ii) is accompanied by the EU declaration of conformity or the attestation of conformity;
  - (iii) is accompanied by the required documents; and
  - (iv) is accompanied by instructions and safety information in a language which can be easily understood by end-users in the [F33 relevant state] in which the product is to be made available on the market;
- (b) the manufacturer has complied with the requirements set out in regulation 11 (Labelling and packaging of products), regulation 12 (Labelling and packaging of products, other than components) and regulation 13 (Information identifying manufacturer); and
- (c) the importer has complied with the requirements set out in regulation 21 (Information identifying importer).

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

- (a) regulation 11(2) (Labelling and packaging of products);
- (b) regulation 13(2)(b) (Information identifying manufacturer);
- (c) regulation 21(3)(b) (Information identifying importer).

**F33** Words in reg. 29(1)(a)(iv) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **4(3)**

### **Storage and transport**

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

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

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

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

- (a) the manufacturer or the importer; and
- (b) the market surveillance authority.

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

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

- (a) bring that product into conformity;
- (b) withdraw the product; or
- (c) recall the product.

(2) Where the product presents a risk, the distributor shall immediately inform the market surveillance authority, and the competent national authorities of the other [<sup>F34</sup>relevant states] in which the distributor has made the product available on the market, of that risk, giving details of—

- (a) the respect in which the product is considered not to be in conformity with Part 2; and
- (b) any corrective measures taken.

**F34** Words in reg. 32(2) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **4(6)**

### **Provision of information and cooperation**

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

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

- (a) evaluate a product in accordance with regulation 55 (Evaluation of a product presenting a risk);
- (b) eliminate the risks posed by a product which the distributor has made available on the market.

## CHAPTER 4

### IMPORTERS AND DISTRIBUTORS

#### **Cases in which obligations of manufacturers apply to importers and distributors**

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

- (a) places a product on the market under A's own name or trademark; or
- (b) modifies a product already placed on the market in such a way that it may affect whether the product is in conformity with Part 2.



## CHAPTER 5

### ALL ECONOMIC OPERATORS

#### Identification of economic operators

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

- (a) any economic operator who has supplied E with a product; and
- (b) any economic operator to whom E has supplied a product.

(2) The relevant period is—

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

#### Prohibition on improper use of CE marking

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

- (a) that economic operator is the manufacturer; and
- (b) the conformity of the product with the essential health and safety requirements has been demonstrated by a relevant conformity assessment procedure.

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

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

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

#### Translation of declaration of conformity

**37.**—(1) Before making a product available on the market, an economic operator shall ensure that the EU declaration of conformity is prepared in, or translated into, the language required by the [<sup>F35</sup>relevant state] in which it is to be made available on the market.

(2) Where the product is to be made available on the market in [<sup>F36</sup>Northern Ireland], the language required is English.

**F35** Words in [reg. 37\(1\)](#) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **4(3)**

**F36** Words in [reg. 37\(2\)](#) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **4(4)**

## PART 3

### CONFORMITY ASSESSMENT

#### Presumption of conformity

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

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

#### Conformity assessment procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) affixing the CE marking; and
- (ii) drawing up of the EU declaration of conformity;
- (b) issue a written attestation of conformity which shall—
  - (i) confirm conformity of the component with Part 2 of these Regulations;
  - (ii) state the characteristics of the component; and
  - (iii) explain how the component shall be incorporated into equipment or protective systems to comply with the essential health and safety requirements.
- (4) In respect of the safety aspects referred to in paragraph 13 of Schedule 1, instead of the conformity assessment procedures referred to in paragraphs (1) and (2), the manufacturer may follow the procedure referred to in Annex VIII to the ATEX Directive (as amended from time to time).
- (5) Where the procedures referred to in paragraphs (1), (2) and (4) have not been applied, the market surveillance authority, may authorise the placing on the market and the putting into service, of a product other than a component, in the [<sup>F37</sup>relevant state] concerned where—
  - (a) the market surveillance authority is in receipt of a duly justified request, requesting the placing on the market and the putting into service of a product, other than a component; and
  - (b) the use of the product is in the interests of protection.
- (6) The manufacturer shall ensure that the documents and correspondence relating to the conformity assessment procedures referred to in paragraphs (1) to (4) are in the language determined by the [<sup>F38</sup>relevant state] in which the product is made available on the market.

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| <p><b>F37</b> Words in <a href="#">reg. 39(5)</a> substituted (10.8.2023) by <a href="#">The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861)</a>, regs. 1(b), <b>5(1)</b></p> <p><b>F38</b> Words in <a href="#">reg. 39(6)</a> substituted (10.8.2023) by <a href="#">The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861)</a>, regs. 1(b), <b>5(1)</b></p> |
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### **EU declaration of conformity**

- 40.** The EU declaration of conformity for a product shall—
- (a) state that the fulfilment of the essential health and safety requirements have been demonstrated in respect of the product;
  - (b) have the model structure set out in Schedule 6; and
  - (c) contain the elements specified in Annexes III to IX to the ATEX Directive (as amended from time to time) for the relevant conformity assessment procedure followed in respect of the product.

### **CE marking**

- 41.—**(1) The CE marking shall be affixed visibly, legibly and indelibly to the product or the product's data plate.
- (2) Where it is not possible or warranted, on account of the nature of the product, to affix the CE marking in accordance with paragraph (1), the CE marking shall be affixed to—
- (a) the packaging; and
  - (b) the accompanying documents.

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

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

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

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

- (a) the specific marking of explosion protection as referred to in paragraph 5(1)(f) of Schedule 1;
- (b) the symbols of the equipment-group and category; and
- (c) where applicable, the other markings and information referred to in paragraph 5 of Schedule 1.

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

#### **[<sup>F39</sup>UK(NI) indication**

**41A.**—(1) Where the CE marking is affixed on the basis of an assessment or a certificate issued by a notified body established in the United Kingdom, a UK(NI) indication must be affixed in relation to the product, in accordance with this regulation.

(2) The UK(NI) indication must be affixed—

- (a) visibly, legibly and indelibly; and
- (b) before a product is placed on the market in Northern Ireland.

(3) The UK(NI) indication must accompany the CE marking, wherever that is affixed in accordance with regulation 7.

(4) The UK(NI) indication must be affixed by—

- (a) the manufacturer; or
- (b) the manufacturer's authorised representative.

(5) When placing a product on the market in Northern Ireland, an importer must ensure that the manufacturer has complied with their obligations under this regulation.

**F39** Regs. 41A, 41B inserted (10.8.2023) by *The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861)*, regs. 1(b), **5(2)**

#### **Register of notified bodies established in the United Kingdom**

**41B.**—(1) The Secretary of State must ensure that—

- (a) each notified body established in the United Kingdom is assigned an identification number; and
- (b) there is a register of—
  - (i) notified bodies established in the United Kingdom;
  - (ii) their notified body identification number;
  - (iii) the activities for which they have been notified; and

(iv) any restrictions on those activities.

(2) The Secretary of State must ensure that the register referred to in paragraph (1) is maintained and made publicly available.

(3) The Secretary of State may authorise the United Kingdom Accreditation Service to compile and maintain the register in accordance with paragraph (1)(b).]

**F39** Regs. 41A, 41B inserted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **5(2)**

## PART 4

### NOTIFICATION OF CONFORMITY ASSESSMENT BODIES

#### Notified bodies

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

[<sup>F40</sup>(a) which has been notified by the Secretary of State to the European Commission and other relevant states; and]

(b) in respect of which no objections[<sup>F41</sup>, other than an immaterial objection,] are raised by the European Commission or other [<sup>F42</sup>relevant states] —

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

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

[<sup>F43</sup>(1A) In paragraph (1)(b), an “immaterial objection” is an objection on the grounds that—

(a) the conformity assessment body is established in the United Kingdom; or

(b) the accreditation certificate was issued by the United Kingdom Accreditation Service.]

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

**F40** Reg. 42(1)(a) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **6(1)(a)**

**F41** Words in reg. 42(1)(b) inserted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **6(1)(b)(i)**

**F42** Words in reg. 42(1)(b) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **6(1)(b)(ii)**

**F43** Reg. 42(1A) inserted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **6(2)**

### Presumption of conformity of notified bodies

43.—(1) Where a conformity assessment body demonstrates its conformity with the criteria laid down in a harmonised standard (or part of such a standard), the reference of which has been published in the Official Journal, the [F44Secretary of State] is to presume that the conformity assessment body meets the notified body requirements covered by that standard (or part of that standard).

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

**F44** Words in reg. 43(1) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **6(3)**

### Notification

44.—(1) The [F45Secretary of State] may notify to the European Commission [F46and other relevant states] only those conformity assessment bodies <sup>F47</sup>... that qualify for notification.

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

(3) The first condition is that the conformity assessment body makes an application to the [F45Secretary of State] for notification and that application is accompanied by—

- (a) a description of—
  - (i) the conformity assessment activities that the conformity assessment body intends to carry out;
  - (ii) the conformity assessment module for which the conformity assessment body claims to be competent; and
  - (iii) the product for which the conformity assessment body claims to be competent; and either
- (b) an accreditation certificate; or
- (c) the documentary evidence necessary for the [F45Secretary of State] to verify, recognise and regularly monitor the conformity assessment body's compliance with the notified body requirements.

(4) The second condition is that the [F45Secretary of State] is satisfied that the conformity assessment body meets the notified body requirements.

(5) For the purposes of paragraph (4), the [F45Secretary of State] may accept an accreditation certificate, provided in accordance with paragraph (3)(b), as sufficient evidence that the conformity assessment body fulfils the notified body requirements.

(6) When deciding whether to notify a conformity assessment body that qualifies for notification to the European Commission [F46and other relevant states], the [F45Secretary of State] may—

- (a) have regard to any other matter which appears to the [F45Secretary of State] to be relevant; and
- (b) set conditions that the conformity assessment body shall meet.

(7) The [F45Secretary of State] shall inform the European Commission of [F48the United Kingdom's] procedures for the assessment and notification of conformity assessment bodies and of any changes to those procedures.

- F45** Words in reg. 44 substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **6(3)**
- F46** Words in reg. 44 substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **6(4)**
- F47** Words in reg. 44(1) omitted (10.8.2023) by virtue of [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **6(5)(a)**
- F48** Words in reg. 44(7) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **6(5)(b)**

### Contents of notification

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

- (a) the details of—
  - (i) the conformity assessment activities in respect of which the conformity assessment body has made its application for notification;
  - (ii) the conformity assessment module or modules in respect of which the conformity assessment body has made its application for notification; and
  - (iii) the product in respect of which the conformity assessment body has made its application for notification; and either
- (b) an accreditation certificate; or
- (c) documentary evidence which attests to—
  - (i) the conformity assessment body's competence; and
  - (ii) the arrangements in place to ensure that the conformity assessment body will be monitored regularly and will continue to meet the notified body requirements.

### Monitoring

**46.—(1)** The [<sup>F49</sup>Secretary of State] shall monitor each notified body with a view to verifying that the notified body—

- (a) continues to meet the notified body requirements;
- (b) meets any conditions set in accordance with regulation 44(6)(b); and
- (c) carries out its functions in accordance with these Regulations.

(2) The [<sup>F49</sup>Secretary of State] shall inform the European Commission of Northern Ireland's procedures for the monitoring of notified bodies and any changes to those procedures.

- F49** Words in reg. 46 substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **6(3)**

### United Kingdom Accreditation Service

**47.** The [<sup>F50</sup>Secretary of State] may authorise the United Kingdom Accreditation Service <sup>M13</sup> to carry out the following activities on behalf of the [<sup>F50</sup>Secretary of State] —

**Changes to legislation:** There are currently no known outstanding effects for the *The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017*. (See end of Document for details)

- (a) assessing whether a conformity assessment body meets the notified body requirements; and
- (b) monitoring notified bodies in accordance with regulation 46 (Monitoring).

**F50** Words in reg. 47 substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **6(3)**

#### Marginal Citations

**M13** a company limited by guarantee incorporated in England and Wales under number 03076190

### Changes to notifications

**48.**—(1) Where the [<sup>F51</sup>Secretary of State] determines that a notified body no longer meets a notified body requirement, or is failing to fulfil its obligations under these Regulations other than conditions set in accordance with regulation 44(6)(b), the [<sup>F51</sup>Secretary of State] shall restrict, suspend or withdraw the body's status as a notified body under regulation 42.

(2) With the consent of a notified body, or where the [<sup>F51</sup>Secretary of State] determines that a notified body no longer meets a condition set in accordance with regulation 44(6)(b), the [<sup>F51</sup>Secretary of State] may restrict, suspend or withdraw the body's status as a notified body under regulation 42.

(3) In deciding what action is required under paragraph (1) or (2), the [<sup>F51</sup>Secretary of State] shall have regard to the seriousness of the non-compliance.

(4) Where the [<sup>F51</sup>Secretary of State] takes action under paragraph (1) or (2), the [<sup>F51</sup>Secretary of State] shall immediately inform the European Commission [<sup>F52</sup>and other relevant states].

(5) Where the [<sup>F51</sup>Secretary of State] has taken action in respect of a notified body under paragraph (1) or (2), or where a notified body has ceased its activity, the notified body shall—

- (a) at the request of the [<sup>F51</sup>Secretary of State], transfer its files relating to the activities it has undertaken as a notified body to another notified body or to the [<sup>F51</sup>Secretary of State] ; or
- (b) in the absence of a request under sub-paragraph (a), keep its files relating to the activities it has undertaken as a notified body available for inspection by the [<sup>F51</sup>Secretary of State] for a period of 10 years from the date they were created.

**F51** Words in reg. 48 substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **6(3)**

**F52** Words in reg. 48(4) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **6(4)**

### Operational obligations of notified bodies

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



### **Subsidiaries and contractors**

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

(2) The notified body shall—

- (a) ensure that the subcontractor or subsidiary meets the notified body requirements; and
- (b) inform the [<sup>F53</sup>Secretary of State] accordingly.

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

(4) Where a notified body subcontracts specific conformity assessment activities, or has such activities carried out by a subsidiary, the notified body shall, for a period of at least 10 years beginning on the day on which the activities are carried out, keep available for inspection by the [<sup>F53</sup>Secretary of State] the documentation concerning—

- (a) the assessment of the qualifications of the subcontractor or the subsidiary; and
- (b) the conformity assessment activities carried out by the subcontractor or subsidiary.

(5) When monitoring a notified body in accordance with regulation 46, the [<sup>F53</sup>Secretary of State] shall treat the notified body as responsible for the tasks performed by a subcontractor or subsidiary, wherever the subcontractor or subsidiary is established.

**F53** Words in [reg. 50](#) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **6(3)**

## **PART 5**

### **MARKET SURVEILLANCE AND ENFORCEMENT**

#### **Designation of market surveillance authority**

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

#### **Enforcement**

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

#### **Enforcement powers**

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

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

#### **Exercise of enforcement powers**

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

- (a) regulation 55 (Evaluation of a product presenting a risk);
- (b) regulation 56 (Enforcement action in respect of products which are not in conformity and which present a risk);
- (c) regulation 57 (EU safeguard procedure);
- (d) regulation 58 (Enforcement action in respect of products which are in conformity, but present a risk);
- (e) regulation 59 (Enforcement action in respect of formal non-compliance); and
- (f) regulation 60 (Restrictive measures).

### **Evaluation of a product presenting a risk**

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

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

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

- (a) take appropriate corrective action to bring the product into conformity with those requirements within a prescribed period;
- (b) withdraw the product within a prescribed period; or
- (c) recall the product within a prescribed period.

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

- (a) the respect in which the product is not in conformity with Part 2; and
- (b) the actions which the Executive is requiring the relevant economic operator to take.

(3) Where the Executive considers that the lack of conformity referred to in paragraph (1) is not restricted to Northern Ireland, the Executive shall [<sup>F54</sup>notify the Secretary of State] of—

- (a) the results of the evaluation; and
- (b) the actions which the Executive has required the economic operator to take.

[<sup>F55</sup>(3A) Subject to paragraph (3B), where the Secretary of State receives a notice under paragraph (3) or otherwise considers that the lack of conformity referred to in paragraph (1) is not restricted to Northern Ireland, the Secretary of State must inform the European Commission and other relevant states of—

- (a) the results of the evaluation; and
- (b) the actions which the Executive has required the economic operator to take.

(3B) Paragraph (3A) does not require the Secretary of State to inform the European Commission or other relevant states where the lack of conformity extends only to any of England or Wales or Scotland.]

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

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

(c) recall the product.

(5) Where the Executive takes measures under paragraph (4), the Executive shall notify the [F56Secretary of State] of those measures without delay.

[F57(5A) Where the Secretary of State receives a notice under paragraph (5), the Secretary of State must notify the European Commission and other relevant states of the measures taken without delay.]

(6) The [F58notices in paragraphs (5) and (5A) must] include details about the product and, in particular—

- (a) the data necessary for the identification of the product which is not in conformity with Part 2;
- (b) the origin of the product;
- (c) the nature of the lack of conformity alleged and the risk involved;
- (d) the nature and duration of the measures taken;
- (e) the arguments put forward by the relevant economic operator; and
- (f) whether the lack of conformity is due to either of the following—
  - (i) failure of the product to meet requirements relating to a risk;
  - (ii) shortcomings in the harmonised standards referred to in regulation 38 (Presumption of conformity) conferring a presumption of conformity.

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

- (a) prescribed by the Executive; and
- (b) reasonable and commensurate with the nature of the risk presented by the product.

- |   |
|---|
| <p><b>F54</b> Words in <a href="#">reg. 56(3)</a> substituted (10.8.2023) by <a href="#">The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861)</a>, regs. 1(b), <b>7(1)(a)</b></p> |
| <p><b>F55</b> <a href="#">Reg. 56(3A)(3B)</a> inserted (10.8.2023) by <a href="#">The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861)</a>, regs. 1(b), <b>7(1)(b)</b></p>        |
| <p><b>F56</b> Words in <a href="#">reg. 56(5)</a> substituted (10.8.2023) by <a href="#">The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861)</a>, regs. 1(b), <b>7(2)</b></p>    |
| <p><b>F57</b> <a href="#">Reg. 56(5A)</a> inserted (10.8.2023) by <a href="#">The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861)</a>, regs. 1(b), <b>7(1)(c)</b></p>            |
| <p><b>F58</b> Words in <a href="#">reg. 56(6)</a> substituted (10.8.2023) by <a href="#">The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861)</a>, regs. 1(b), <b>7(1)(d)</b></p> |

## EU safeguard procedure

57.—(1) Where another [F59relevant state] has initiated the procedure under Article 35 of the ATEX Directive (as amended from time to time), the Executive shall, without delay, inform the [F60Secretary of State] of—

- (a) any measures taken by the Executive in respect of the product; [F61and]
- (b) any additional information which the Executive has at its disposal relating to the lack of conformity of the [F62product.]

<sup>F63</sup>(c) .....

<sup>F64</sup>(1A) Where another relevant state has initiated the procedure under Article 35 of the ATEX Directive (as amended from time to time), the Secretary of State must, without delay, inform the European Commission and the other relevant states of—

- (a) any measures taken in Northern Ireland by the Executive in respect of the product;
- (b) any additional information which the Executive has at its disposal relating to the lack of conformity of the product.]

(2) Where a measure taken by another [<sup>F65</sup>relevant state] in respect of a product is considered justified under Article 35(7) of the ATEX Directive (as amended from time to time), the Executive shall ensure that appropriate measures, such as withdrawal, are taken [<sup>F66</sup>in Northern Ireland] in respect of the product without delay.

(3) Where a measure taken by another [<sup>F67</sup>relevant state] in respect of a product is considered justified by the European Commission under Article 36(1) of the ATEX Directive (as amended from time to time), the Executive shall take the necessary measures to ensure that the product is withdrawn from the market in Northern Ireland.

(4) Where the Executive has taken action under paragraph (2) or (3), the Executive shall [<sup>F68</sup>notify the Secretary of State] of the action taken.

<sup>F69</sup>(4A) Where the Secretary of State receives a notice under paragraph (4), the Secretary of State must inform the European Commission of the action taken in respect of Northern Ireland.]

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

- F59** Words in reg. 57(1) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **7(3)(a)(i)**
- F60** Words in reg. 57(1) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **7(2)**
- F61** Word in reg. 57(1)(a) inserted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **7(3)(a)(ii)**
- F62** Word in reg. 57(1)(b) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **7(3)(a)(iii)**
- F63** Reg. 57(1)(c) omitted (10.8.2023) by virtue of [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **7(3)(a)(iv)**
- F64** Reg. 57(1A) inserted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **7(3)(b)**
- F65** Words in reg. 57(2) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **7(3)(c)**
- F66** Words in reg. 57(2) inserted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **7(3)(d)**

- F67** Words in reg. 57(3) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **7(3)(c)**
- F68** Words in reg. 57(4) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **7(3)(e)**
- F69** Reg. 57(4A) inserted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **7(3)(f)**

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

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

- (a) ensure that the product concerned, when placed on the market, no longer presents a risk;
- (b) withdraw the product within a prescribed period; or
- (c) recall the product within a prescribed period.

(2) Where the Executive takes measures under paragraph (1), the Executive shall notify the [<sup>F70</sup>Secretary of State] immediately.

[<sup>F71</sup>(2A) Where the Secretary of State receives a notice under paragraph (2), the Secretary of State must notify the European Commission and the other relevant states immediately.]

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

- (a) the data necessary for the identification of the product concerned;
- (b) the origin and the supply chain of the product;
- (c) the nature of the risk involved; and
- (d) the nature and duration of the measures taken by the Executive.

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

- (a) prescribed by the Executive; and
- (b) reasonable and commensurate with the nature of the risk presented by the product.

- F70** Words in reg. 58(2) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **7(2)**
- F71** Reg. 58(2A) inserted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **7(4)**

### Enforcement action in respect of formal non-compliance

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

- (a) the CE marking—
  - (i) where required, has not been affixed; or

- (ii) has been affixed otherwise than in accordance with regulations 36 (Prohibition on improper use of CE marking) and 41 (CE marking);
  - [<sup>F72</sup>(aa) the UK(NI) indication—
    - (i) has not been affixed, in contravention of regulation 41A; or
    - (ii) has been affixed other than in accordance with regulation 41A;]
  - (b) where a notified body is involved in the production control phase for the product, the identification number of the notified body—
    - (i) has not been affixed; or
    - (ii) has been affixed otherwise than in accordance with regulation 41;
  - (c) the EU declaration of conformity or the attestation of conformity as appropriate—
    - (i) does not accompany the product; or
    - (ii) has been drawn up otherwise than in accordance with regulations 7 (EU declaration of conformity and CE marking) and 40 (EU declaration of conformity);
  - (d) the technical documentation is either not available or not complete;
  - (e) the following product information has not been affixed or has been affixed otherwise than in accordance with paragraph 5 of Schedule 1—
    - (i) specific marking of explosion protection in accordance with paragraph 5(1)(f) of Schedule 1;
    - (ii) the symbols of the equipment-group and category in accordance with paragraph 5(1)(g) of Schedule 1;
    - (iii) where applicable, the other markings and information required by paragraph 5(1) of Schedule 1.
  - (f) the following information that is required to be included in the labelling of the product is absent, false or incomplete—
    - (i) the information specified in regulation 13 (Information identifying manufacturer);
    - (ii) the information specified in regulation 21 (Information identifying importer); or
  - (g) any other administrative requirement imposed on the manufacturer or importer under Part 2 has not been fulfilled.
- (2) The Executive shall not take any enforcement action against the relevant economic operator under these Regulations in respect of the non-compliance concerned until the period referred to in paragraph (1) has elapsed.
- (3) Where the non-compliance referred to in paragraph (1) persists, the Executive shall take appropriate measures to—
- (a) restrict or prohibit the product being made available on the market;
  - (b) ensure that the product is withdrawn; or
  - (c) ensure that the product is recalled.
- (4) This regulation does not apply where a product presents a risk.

**F72** Reg. 59(1)(aa) inserted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **7(5)**

## Restrictive measures

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

- (a) prohibit or restrict a product being made available on the market;
- (b) withdraw a product; or
- (c) recall a product.

## Offences

**61.—**(1) It is an offence for any person to contravene or fail to comply with any requirement of regulations 5 to 15, 16(2), 18 to 25, 26(2), 27 to 32, 33(2), [<sup>F73</sup>35, 36 or 41A].

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

**F73** Words in reg. 61(1) substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **7(6)**

## Penalties

**62.** Any person guilty of an offence under regulation 61 is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both; and
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or to both.

## Defence of due diligence

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

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

- (a) served a notice in accordance with paragraph (3); or
- (b) obtained the leave of the court.

(3) The notice shall—

- (a) give any information in P's possession which identifies or assists in identifying the person who—
  - (i) committed the act or default; or
  - (ii) supplied the information on which P relied;
- (b) be served on the person bringing the proceedings not less than seven clear days before the hearing of the proceedings.

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

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

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

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

- (a) to the act or default of another person; or
- (b) to reliance on information supplied by another person.

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

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

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

- (a) with the consent or connivance of the relevant person; or
- (b) as a result of the negligence of the relevant person.

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

- (a) a director, manager, secretary or other similar officer of the body corporate;
- (b) in relation to a body corporate managed by its members, a member of that body corporate performing managerial functions; or
- (c) a person purporting to act as a person described in sub-paragraphs (a) or (b).

### **Time limit for prosecution of offences**

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

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

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

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

### **Service of documents**

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

- (a) delivering it to that person in person;
- (b) leaving it at that person's proper address; or
- (c) sending it by post or electronic means to that person's proper address.

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

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

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

- (a) in the case of a body corporate or its director—
  - (i) the registered or principal office of that body; or



- (ii) the email address of the secretary or clerk of that body;
  - (b) in the case of a partnership, a partner or person having control or management of the partnership business—
    - (i) the principal office of the partnership; or
    - (ii) the email address of a partner or person having that control or management;
  - (c) in any other case, a person's last known address, which includes an email address.
- (5) If a person to be served with a document has specified an address in the United Kingdom (other than that person's proper address) at which that person or someone on that person's behalf will accept service, that address shall also be treated as that person's proper address.

### **Recovery of expenses of enforcement**

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

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

### **Action by the Executive**

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

- (a) the Executive has been unable to identify any economic operator on whom to serve such a notice; or
- (b) the economic operator on whom such a notice has been served has failed to comply with it.

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

(3) A civil debt recoverable under paragraph (2) may be recovered summarily in proceedings under Article 62 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>M14</sup>.

#### **Marginal Citations**

**M14** [S.I. 1981/1675 \(N.I. 26\)](#)

### **Appeals against notices**

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

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

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

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

- (a) that the product to which the notice relates is in conformity with Part 2 and does not present a risk; or
  - (b) that the Executive failed to comply with regulation 54 (Exercise of enforcement powers) when serving the notice.
- (4) On an application to vary the terms of a notice served under these Regulations, the appropriate court may vary the terms of the notice as it considers appropriate.
- (5) In this regulation—
- (a) the “appropriate court” is to be determined in accordance with regulation 70 (Appropriate court for appeals against notices); and
  - (b) “notice” means any of the following—
    - (i) a notice to warn served in accordance with Schedule 4 (Enforcement powers of the Health and Safety Executive for Northern Ireland under the 1978 Order);
    - (ii) a suspension notice served in accordance with Schedule 4;
    - (iii) a compliance notice served in accordance with Schedule 5 (Compliance, withdrawal and recall notices);
    - (iv) a withdrawal notice served in accordance with Schedule 5;
    - (v) a recall notice served in accordance with Schedule 5.

#### **Appropriate court for appeals against notices**

- 70.**—(1) The appropriate court for the purposes of regulation 69 is—
- (a) the court in which proceedings have been brought in relation to the product for an offence under regulation 61 (Offences);
  - (b) an industrial tribunal seized of appeal proceedings against a notice which relates to the product and which has been served under or by virtue of paragraph 1 of Schedule 4 (Enforcement powers of the Health and Safety Executive for Northern Ireland under the 1978 Order); or
  - (c) in any other case, a magistrates' court.
- (2) A person aggrieved by an order made by a magistrates' court pursuant to an application under regulation 69, or by a decision of such a court not to make such an order, may appeal against that order or decision to the county court.

## **PART 6**

### **MISCELLANEOUS**

#### **Transitional provisions**

- 71.**—(1) A certificate issued, or approval granted, by a notified body under Schedule 6 to the 1996 Regulations, or any enactment of another [F74relevant state] which implemented the 1994 Directive, is to be treated as a certificate issued or approval granted under the ATEX Directive.
- (2) Regulation 2(6) has no effect until the entry into force of any amendment made to Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement by a Decision of the EEA Joint Committee, inserting a reference to the ATEX Directive into that Annex.

**F74** Words in reg. 71(1) substituted (10.8.2023) by *The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023* (S.I. 2023/861), regs. 1(b), **8(1)**

**[<sup>F75</sup> Transitional provision in relation to notification of conformity assessment bodies**

**71A.**—(1) Where paragraph (2) has effect, a conformity assessment body will be treated as having been notified by the Secretary of State pursuant to regulation 42(1)(a).

(2) This paragraph applies where a conformity assessment body was notified by the Executive, in accordance with regulation 42(1)(a) as it had effect prior to the commencement of the *Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023*.]

**F75** Reg. 71A inserted (10.8.2023) by *The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023* (S.I. 2023/861), regs. 1(b), **8(2)**

**Consequential amendments, revocations and savings**

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

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

(3) The 1996 Regulations, the *Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations (Northern Ireland) 1999*<sup>M15</sup> and the *Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations (Northern Ireland) 2008*<sup>M16</sup> continue to apply, as if they had not been revoked, to a product placed on the market or put into service before the commencement date.

**Marginal Citations**

**M15** S.R. 1999 No. 125

**M16** S. R. 2008 No. 422

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

L.S.

*Colin Jack*  
A senior officer of the  
Department for the Economy

## SCHEDULE 1

Regulation 2(1)

### ESSENTIAL HEALTH AND SAFETY REQUIREMENTS

#### *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 to the ATEX Directive)*

#### **Preliminary observations**

1.—(1) Technological knowledge which can change rapidly, shall be taken into account as far as possible and be utilised immediately.

(2) For the devices referred to in regulation 3(2)(b), the essential health and safety 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.

#### *COMMON REQUIREMENTS FOR EQUIPMENT AND PROTECTIVE SYSTEMS*

##### *General requirements*

#### **Principles of integrated explosion safety**

2.—(1) Equipment and protective systems intended for use in potentially explosive atmospheres shall be designed from the point of view of integrated explosion safety.

(2) In this connection, the manufacturer shall take measures—

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

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

(4) Any misuse which can reasonably be anticipated shall be taken into account.

#### **Special checking and maintenance conditions**

3. Equipment and protective systems subject to special checking and maintenance conditions shall be designed and constructed with such conditions in mind.

#### **Surrounding area conditions**

4. Equipment and protective systems shall be so designed and constructed as to be capable of coping with actual or foreseeable surrounding area conditions.

#### **Marking**

5.—(1) All equipment and protective systems shall be marked legibly and indelibly with the following minimum particulars—

- (a) name, registered trade name or registered trade mark, and address of the manufacturer;
- (b) CE marking (see Annex II to RAMS);
- (c) designation of series or type;
- (d) batch or serial number, if any;
- (e) year of construction;
- (f) the specific marking of explosion protection



followed by the symbol of the equipment-group and category;

- (g) for equipment-group II,
  - (i) the letter 'G' (concerning explosive atmospheres caused by gases, vapours or mists);  
or
  - (ii) the letter 'D' (concerning explosive atmospheres caused by dust); or
  - (iii) both the letter 'G' (concerning explosive atmospheres caused by gases, vapours or mists) and the letter 'D' (concerning explosive atmospheres caused by dust).

(2) Furthermore, where necessary, they shall also be marked with all information essential to their safe use.

### Instructions

6.—(1) All equipment and protective systems shall be accompanied by instructions, including at least the following particulars—

- (a) a recapitulation of the information with which the equipment or protective system is marked, except for the batch or serial number (see paragraphs 5(1) and (2)), together with any appropriate additional information to facilitate maintenance (e.g. address of the repairer, etc.);
- (b) instructions for safe—
  - (i) putting into service;
  - (ii) use;
  - (iii) assembling and dismantling;
  - (iv) maintenance (servicing and emergency repair);
  - (v) installation;
  - (vi) adjustment;
- (c) where necessary, an indication of the danger areas in front of pressure-relief devices;
- (d) where necessary, training instructions;
- (e) 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;
- (f) electrical and pressure parameters, maximum surface temperatures and other limit values;
- (g) where necessary, special conditions of use, including particulars of possible misuse which experience has shown might occur;
- (h) where necessary, the essential characteristics of tools which may be fitted to the equipment or protective system.

(2) The instructions shall 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.

(3) Literature describing the equipment or protective system shall not contradict the instructions with regard to safety aspects.

### **Selection of materials**

7.—(1) The materials used for the construction of equipment and protective systems shall not trigger off an explosion, taking into account foreseeable operational stresses.

(2) Within the limits of the operating conditions laid down by the manufacturer, it shall 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.

(3) Materials shall 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 shall be taken of the material's corrosion and wear resistance, electrical conductivity, mechanical strength, ageing resistance and the effects of temperature variations.

### **Design and construction**

8.—(1) Equipment and protective systems shall be designed and constructed with due regard to technological knowledge of explosion protection so that they can be safely operated throughout their foreseeable lifetime.

(2) Components to be incorporated into or used as replacements in equipment and protective systems shall 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**

9.—(1) Equipment which may release flammable gases or dusts shall, wherever possible, employ enclosed structures only.

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

(3) Points where materials are introduced or drawn off shall, as far as possible, be designed and equipped so as to limit releases of flammable materials during filling or draining.

### **Dust deposits**

10.—(1) Equipment and protective systems which are intended to be used in areas exposed to dust shall be so designed that deposit dust on their surfaces is not ignited.

(2) In general, dust deposits shall be limited where possible. Equipment and protective systems shall be easily cleanable.

(3) The surface temperatures of equipment parts shall be kept well below the glow temperature of the deposit dust.

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

### **Additional means of protection**

11.—(1) Equipment and protective systems which may be exposed to certain types of external stresses shall be equipped, where necessary, with additional means of protection.

(2) Equipment shall withstand relevant stresses, without adverse effect on explosion protection.

### **Safe opening**

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

### **Protection against other hazards**

13.—(1) Equipment and protective systems shall 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 do not give rise to dangerous situations.

(2) Where, for equipment and protective systems, the risks referred to in this paragraph (1) are wholly or partly covered by other European Union legislation, these Regulations do not apply or cease to apply in the case of such equipment and protective systems and of such risks upon application of that specific European Union legislation.

### **Overloading of equipment**

14. Dangerous overloading of equipment shall 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 or similar types of monitoring devices, or both overspeed monitors and similar types of monitoring devices.

### **Flameproof enclosure systems**

15. If parts which can ignite an explosive atmosphere are placed in an enclosure, measures shall 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**

16. Potential ignition sources such as sparks, flames, electric arcs, high surface temperatures, acoustic energy, optical radiation, electromagnetic waves and other ignition sources shall not occur.

### **Hazards arising from static electricity**

17. Electrostatic charges capable of resulting in dangerous discharges shall be prevented by means of appropriate measures.

### **Hazards arising from stray electric and leakage currents**

18. 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 shall be prevented.

### **Hazards arising from overheating**

19. 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 shall, as far as possible, be prevented at the design stage.

### **Hazards arising from pressure compensation operations**

20. Equipment and protective systems shall 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**

21.—(1) Equipment and protective systems shall 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.

(2) Equipment parts used shall 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**

22.—(1) Safety devices shall function independently of any measurement or control devices, or both measurement and control devices required for operation.

(2) As far as possible, failure of a safety device shall be detected sufficiently rapidly by appropriate technical means to prevent dangerous situations from occurring.

(3) The fail-safe principle is to be applied in general.

(4) Safety-related switching shall in general directly actuate the relevant control devices without intermediate software command.

(5) In the event of a safety device failure, equipment or protective systems or both shall wherever possible, be secured.

(6) Emergency stop controls of safety devices shall, 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**

23. Where control and display units are used, they shall 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**

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

(2) Where necessary, it shall be possible to check the reading accuracy and serviceability of devices with a measuring function.

(3) The design of devices with a measuring function shall incorporate a safety factor which ensures that the alarm threshold lies far enough outside the explosion or ignition limits of the atmospheres to be registered, or both the explosion and ignition limits, taking into account, in particular, the operating conditions of the installation and possible aberrations in the measuring system.

### **Risks arising from software**

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

### **Integration of safety requirements relating to the system**

26.—(1) Manual override shall 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.

(2) When the emergency shutdown system is actuated, accumulated energy shall be dispersed as quickly and as safely as possible or isolated so that it no longer constitutes a hazard.

(3) Sub-paragraph (2) does not apply to electrochemically-stored energy.

### **Hazards arising from power failure**

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

### **Hazards arising from connections**

28.—(1) Equipment and protective systems shall be fitted with suitable cable and conduit entries.

(2) When equipment and protective systems are intended for use in combination with other equipment and protective systems, the interface shall be safe.

### **Placing of warning devices as parts of equipment**

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

## ***SUPPLEMENTARY REQUIREMENTS IN RESPECT OF EQUIPMENT***

### ***Requirements applicable to equipment in equipment-group I***

### **Requirements applicable to equipment in category M 1 of equipment-group I**

30.—(1) Equipment shall be so designed and constructed that sources of ignition do not become active, even in the event of rare incidents relating to equipment.

- (2) Equipment shall be equipped with means of protection such that—
  - (a) either, in the event of failure of one means of protection, at least an independent second means provides the requisite level of protection; or
  - (b) the requisite level of protection is ensured in the event of two faults occurring independently of each other.
- (3) Where necessary, equipment shall be equipped with additional special means of protection.
- (4) Equipment shall remain functional with an explosive atmosphere present.
- (5) Where necessary, equipment shall be so constructed that no dust can penetrate it.
- (6) The surface temperatures of equipment parts shall be kept clearly below the ignition temperature of the foreseeable air/dust mixtures in order to prevent the ignition of suspended dust.
- (7) Equipment shall 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 shall affix a warning label to the opening part of the equipment.
- (8) If necessary, equipment shall be fitted with appropriate additional interlocking systems.

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

- 31.—(1) Equipment shall 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.
- (2) The equipment shall be de-energised in the event of an explosive atmosphere.
  - (3) Equipment shall 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 shall affix a warning label to the opening part of the equipment.
  - (4) The requirements regarding explosion hazards arising from dust applicable to equipment category M 1 shall be applied.

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

#### **Explosive atmospheres caused by gases, vapours or mists**

- 32.—(1) Equipment shall be so designed and constructed that sources of ignition do not become active, even in event of rare incidents relating to equipment.
- (2) It shall be equipped with means of protection such that—
    - (a) either, in the event of failure of one means of protection, at least an independent second means provides the requisite level of protection; or
    - (b) the requisite level of protection is ensured in the event of two faults occurring independently of each other.
  - (3) For equipment with surfaces which may heat up, measures shall be taken to ensure that the stated maximum surface temperatures are not exceeded even in the most unfavourable circumstances.
  - (4) Temperature rises caused by heat build-ups and chemical reactions shall also be taken into account.
  - (5) Equipment shall 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 shall affix a warning label to the opening part of the equipment.

(6) If necessary, equipment shall be fitted with appropriate additional interlocking systems.

#### **Explosive atmospheres caused by air and dust mixtures**

33.—(1) Equipment shall be so designed and constructed that ignition of air and dust mixtures does not occur even in the event of rare incidents relating to equipment.

(2) It shall be equipped with means of protection such that—

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

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

(4) The requirement in sub-paragraph (3) shall also be met by cable entries and connecting pieces.

(5) The surface temperatures of equipment parts shall be kept well below the ignition temperature of the foreseeable air and dust mixtures in order to prevent the ignition of suspended dust.

(6) With regard to the safe opening of equipment parts, sub-paragraph 32(5) applies.

*Requirements applicable to equipment in category 2 of equipment-group II*

#### **Explosive atmospheres caused by gases, vapours or mists**

34.—(1) Equipment shall 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) Equipment parts shall 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.

(3) Equipment shall 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 shall affix a warning label to the opening part of the equipment.

#### **Explosive atmospheres caused by air and dust mixtures**

35.—(1) Equipment shall be designed and constructed so that ignition of air and 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) With regard to surface temperatures, sub-paragraph 33(5) applies.

(3) With regard to protection against dust, sub-paragraph 33(3) applies.

(4) With regard to the safe opening of equipment parts, sub-paragraph 34(3) applies.

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

#### **Explosive atmospheres caused by gases, vapours or mists**

36.—(1) Equipment shall be so designed and constructed as to prevent foreseeable ignition sources which can occur during normal operation.

(2) Surface temperatures shall 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 and dust mixtures**

37.—(1) Equipment shall be so designed and constructed that air and dust mixtures cannot be ignited by foreseeable ignition sources likely to exist during normal operation.

(2) With regard to surface temperatures, sub-paragraph 33(5) applies.

(3) Equipment, including cable entries and connecting pieces, shall 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**

38.—(1) Protective systems shall be dimensioned in such a way as to reduce the effects of an explosion to a sufficient level of safety.

(2) Protective systems shall be designed and capable of being positioned in such a way that explosions are prevented from spreading through dangerous chain reactions or flashover and incipient explosions do not become detonations.

(3) In the event of a power failure, protective systems shall retain their capacity to function for a period sufficient to avoid a dangerous situation.

(4) Protective systems shall not fail due to outside interference.

#### *Planning and design*

### **Characteristics of materials**

39.—(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.

(2) Protective systems designed to resist or contain explosions shall be capable of withstanding the shock wave produced without losing system integrity.

(3) Accessories connected to protective systems shall be capable of withstanding the expected maximum explosion pressure without losing their capacity to function.

(4) The reactions caused by pressure in peripheral equipment and connected pipe-work shall be taken into consideration in the planning and design of protective systems.

### **Pressure-relief systems**

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

### **Explosion suppression systems**

41. Explosion suppression systems shall 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

42. Decoupling systems intended to disconnect specific equipment as swiftly as possible in the event of incipient explosions by means of appropriate devices shall be planned and designed so as to remain proof against the transmission of internal ignition and to retain their mechanical strength under operating conditions.

43. Protective systems shall 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 2

Regulation 2(1)

### NOTIFIED BODY REQUIREMENTS

1. A conformity assessment body shall be established in [<sup>F76</sup>the United Kingdom] and have legal personality.

**F76** Words in Sch. 2 para. 1 substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), 9(a)

2. A conformity assessment body shall be a third party body independent of the organisation or the product it assesses.

3. A body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of products which it assesses is to be a conformity assessment body for the purposes of regulation 44 (Notification) provided that such body can demonstrate—

- (a) its independence from such business association or professional federation; and
- (b) the absence of any conflict of interest.

4.—(1) A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment activities shall not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the products, nor the representative of any of those parties.

(2) Sub-paragraph (1) does not preclude the use of assessed products that are necessary for the operations of the conformity assessment body or the use of products for personal purposes.

5. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment activities shall not be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of the products, or represent the parties engaged in those activities.

6. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment activities shall not engage in activity that may conflict with their independence of judgment or integrity in relation to conformity assessment activities for which they are notified (including consultancy services).

7. A conformity assessment body shall ensure that the activities of its subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.

8. A conformity assessment body and its personnel shall carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field and shall be free from all pressures and inducements, particularly financial, which might influence their judgment or the results of their conformity assessment activities, especially as regards persons or groups of persons who have an interest in the results of those activities.

9. A conformity assessment body shall be capable of carrying out all of the conformity assessment activities for which it has been, or is to be, notified, whether those activities are carried out by the conformity assessment body itself or on its behalf and under its responsibility.

10. A conformity assessment body shall have—

- (a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment activities;
- (b) descriptions of procedures in accordance with which conformity assessment activities are to be carried out, ensuring the transparency of and the ability to reproduce those procedures, and have appropriate policies and procedures in place that distinguish between tasks it carries out as a notified body and other activities;
- (c) procedures for the performance of conformity assessment activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the process.

11. A conformity assessment body shall have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and shall have access to the necessary equipment or facilities to enable it to perform those activities.

12. The personnel responsible for carrying out conformity assessment activities shall have—

- (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;
- (b) satisfactory knowledge of the requirements of the assessments which the personnel carry out and adequate authority to carry out those assessments;
- (c) appropriate knowledge and understanding of the essential health and safety requirements, of the applicable harmonised standards and of the ATEX Directive and of these Regulations;
- (d) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.

13. A conformity assessment body shall be able to demonstrate the impartiality of its top level management and the personnel responsible for carrying out the conformity assessment activities.

14. The remuneration of the top level management and the personnel responsible for carrying out the conformity assessment activities shall not depend on the number of assessments carried out or on the results of those assessments.

15. A conformity assessment body shall have, and shall satisfy the [<sup>F77</sup>Secretary of State] that it has, adequate civil liability insurance in respect of its activities.

**F77** Words in Sch. 2 para. 15 substituted (10.8.2023) by [The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations \(Northern Ireland\) 2017 \(Amendment\) \(Northern Ireland\) Regulations 2023 \(S.I. 2023/861\)](#), regs. 1(b), **9(b)**

16. A conformity assessment body shall ensure that its personnel observe professional secrecy with regard to all information obtained in carrying out their tasks in accordance with these Regulations and that proprietary rights are protected.

17. Paragraph 16 does not prevent the personnel from providing information to the [<sup>F78</sup>Secretary of State] pursuant to these Regulations or under any enactment.

**F78** Words in Sch. 2 para. 17 substituted (10.8.2023) by *The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 (S.I. 2023/861)*, regs. 1(b), **9(b)**

18. A conformity assessment body shall participate in, or ensure that its personnel who are responsible for carrying out the conformity assessment activities are informed of, the relevant standardisation activities and the activities of any notified body coordination group established under the ATEX Directive and shall apply as general guidance the administrative decisions and documents produced as a result of the work of that group.

### SCHEDULE 3

Regulation 49

#### OPERATIONAL OBLIGATIONS OF NOTIFIED BODIES

1. A notified body shall carry out conformity assessments in accordance with the relevant conformity assessment procedures.
2. A notified body shall carry out conformity assessments in a proportionate manner, avoiding unnecessary burdens on economic operators.
3. A notified body shall perform its activities taking due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.
4. A notified body shall respect the degree of rigour and the level of protection required to ensure that the product is in conformity with the requirements of these Regulations.
5. Where a notified body finds that essential health and safety requirements or corresponding harmonised standards or other technical specifications have not been met by a manufacturer, it shall require the manufacturer to take appropriate corrective measures and shall not issue a certificate of conformity or grant an approval.
6. Where, in the course of the monitoring of conformity following the issue of a certificate or grant of an approval, a notified body finds that a product is no longer in conformity with the essential health and safety requirements, it shall require the manufacturer to take appropriate corrective measures and shall suspend or withdraw the certificate of conformity or approval (if necessary).
7. Where the notified body has required a manufacturer to take corrective measures and the manufacturer has failed to take such measures, or those measures have not had the required effect, the notified body shall restrict, suspend or withdraw any certificate of conformity or approval.
8. Paragraph 9 applies where a notified body is minded to—
  - (a) refuse to issue a certificate of conformity or grant an approval;
  - (b) restrict, suspend or withdraw a certificate of conformity or approval.
9. Where this paragraph applies, the notified body shall—
  - (a) give the person applying for the certificate or approval, or the person to whom the certificate or approval was given, a notice in writing giving reasons and specifying the date on which the refusal, restriction, suspension or withdrawal is intended to take effect;

- (b) give the person applying for the certificate or approval, or the person to whom the certificate or approval was given, an opportunity to make representations within a reasonable period from the date of the notice; and
  - (c) take account of any such representations before taking its decision.
10. A notified body shall inform the Executive of—
- (a) any refusal, restriction, suspension or withdrawal of a certificate of conformity or approval;
  - (b) any circumstances affecting the scope of, or conditions for, notification under regulation 44 (Notification); and
  - (c) on request, any conformity assessment activities performed within the scope of its notification under regulation 44 and any other activity performed, including cross-border activities and subcontracting.
11. A notified body shall make provision in its contracts with its clients enabling such clients to appeal against a decision—
- (a) to refuse to issue a certificate of conformity or grant an approval; or
  - (b) to restrict, suspend or withdraw a certificate of conformity or approval.
12. A notified body shall provide other bodies notified under the ATEX Directive carrying out similar conformity assessment activities covering the same products with relevant information on issues relating to negative and, on request, positive conformity assessment results.
13. A notified body shall participate in the work of any notified body coordination group established under the ATEX Directive, directly or by means of its designated representatives.
14. A notified body shall—
- (a) acknowledge receipt of the technical documentation provided by the manufacturer in accordance with regulation 39(1)(b)(ii)(bb) (Conformity assessment procedures) as soon as possible; and
  - (b) retain the technical documentation referred to in sub-paragraph (a).

#### SCHEDULE 4

Regulation 53(1)

### ENFORCEMENT POWERS OF THE HEALTH AND SAFETY EXECUTIVE FOR NORTHERN IRELAND UNDER THE 1978 ORDER

#### **Enforcement powers under the 1978 Order**

1. For the purposes of enforcing these Regulations, the following Articles of the 1978 Order apply subject to the modifications in paragraph 2—
- (a) Article 21 (Appointment of inspectors);
  - (b) Article 22 (Powers of inspectors);
  - (c) Article 23 (Improvement notices);
  - (d) Article 24 (Prohibition notices);
  - (e) Article 25 (Provisions supplementary to Articles 23 and 24);
  - (f) Article 26 (Appeal against improvement or prohibition notice);
  - (g) Article 27 (Power to deal with cause of imminent danger);



- (h) Article 27A (Power of customs officer to detain articles and substances);
- (i) Article 28 (Power of enforcing authorities to indemnify inspectors);
- (j) Article 29 (Obtaining of information);
- (k) Article 29A (Information communicated by Commissioners for Revenue and Customs);
- (l) Article 30 (Restrictions on disclosure of information);
- (m) Article 31 (Offences);
- (n) Article 32 (Extension of time for bringing summary proceedings);
- (o) Article 33 (Venue);
- (p) Article 36 (Prosecution by inspectors);
- (q) Article 38 (Evidence); and
- (r) Article 39 (Power of court to order cause of offence to be remedied and, in certain cases, forfeiture).

### **Modifications to the 1978 Order**

- 2. The Articles of the 1978 Order referred to in paragraph 1 are to apply as if—
  - (a) references to “relevant statutory provisions” were references to—
    - (i) the provisions of the 1978 Order set out in paragraph 1, as modified by this paragraph; and
    - (ii) these Regulations;
  - (b) references to “risk” were references to risk within the meaning of regulation 2(5) of these Regulations;
  - (c) in Article 21—
    - (i) in paragraph (1), for “Every enforcing authority” there were substituted “ the Health and Safety Executive for Northern Ireland ”;
    - (ii) in paragraph (1), “within its field of responsibility” were omitted;
    - (iii) in paragraph (2), sub-paragraph (b) were omitted;
    - (iv) in paragraph (3), for “enforcing authority which appointed him” there were substituted “ Health and Safety Executive for Northern Ireland ”;
  - (d) in Article 22—
    - (i) in paragraph (1), “within the field of responsibility of the enforcing authority which appointed him” were omitted;
    - (ii) in paragraph (2)(c)(i), for “his (the inspector's) enforcing authority” there were substituted “ the Health and Safety Executive for Northern Ireland ”;
    - (iii) in paragraph 2(h), for “him to have caused or likely to cause danger to health or safety”, there were substituted “ contravene the relevant statutory provisions or present a risk ”; and
    - (iv) paragraph (3) were omitted;
  - (e) in Article 23—
    - (i) before paragraph (a), there were inserted—
      - “(za) is making available on the market a product which presents a risk;”;
    - (ii) after “specifying the”, there were inserted “ risk, or ”; and
    - (iii) after “requiring that person to”, there were inserted “ address the risk or ”;

- (f) for Article 24(2) and (3) there were substituted—
- “(2) An inspector may serve a notice (in this Part referred to as a “prohibition notice”) on a person if, as regards any activities to which this paragraph applies, the inspector is of the opinion that, as carried on or likely to be carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve—
- (a) a risk; or
  - (b) a contravention of a relevant statutory provision.
- (3) A prohibition notice shall—
- (a) state that the inspector is of the said opinion;
  - (b) specify the matters which in his opinion give or, as the case may be, will give rise to the said risk;
  - (c) where in his opinion any of those matters involves or, as the case may be, will involve a contravention of any of the relevant statutory provisions, state that he is of the opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
  - (d) direct that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of sub-paragraph (b) and any associated contraventions of provisions so specified in pursuance of sub-paragraph (c) have been remedied.”
- (g) in Article 25, paragraphs (3), (4) and (5) were omitted
- (h) in Article 27A(1)—
- (i) for “any enforcing authority or inspector”, there were substituted “ the Health and Safety Executive for Northern Ireland ”; and
  - (ii) for the “authority”, there were substituted “ the Health and Safety Executive for Northern Ireland ”;
- (i) for the title to Article 28, there were substituted “ Power to indemnify its inspectors ”;
- (j) in Article 28, for each of the following references there were substituted “ the Health and Safety Executive for Northern Ireland ”
- (i) “the enforcing authority which appointed him”;
  - (ii) “that authority”; and
  - (iii) “the authority”;
- (k) in Article 29—
- (i) in paragraph (1)(b) for “an enforcing authority” there were substituted “ the Health and Safety Executive for Northern Ireland ” and for “the authority's functions” there were substituted “ its functions ”;
  - (ii) “the department concerned, or” were omitted;
  - (iii) for “the Executive”, in each case it appears, there were substituted “ the Health and Safety Executive for Northern Ireland ” and
  - (iv) “or, as the case may be, to the enforcing authority in question” were omitted;
- (l) for Article 29A(2) substitute—
- “(2) This paragraph applies to the Health and Safety Executive for Northern Ireland and to an inspector”;
- (m) in Article 30—

- (i) for “the Executive”, in each case it appears, there were substituted “ the Health and Safety Executive for Northern Ireland ”;
- (ii) in paragraph (3)(a), “or any enforcing authority” were omitted;
- (iii) in paragraph (4)—
  - (aa) “or an enforcing authority” were omitted; and
  - (bb) “(including, in the case of an enforcing authority, any inspector appointed by it)” were omitted;
- (iv) in paragraph (5)(a), “or the purposes of the enforcing authority in question in connection with the relevant statutory provisions” were omitted; and
- (v) in paragraph 6—
  - (aa) “16(4)(a) or” were omitted; and
  - (bb) for paragraph (b), there were substituted—
    - “(b) for the purposes of any legal proceedings or for the purposes of a report of any such proceedings;”;
- (n) in Article 31—
  - (i) in paragraph (1), sub-paragraphs (a) to (i) and (k) to (m) were omitted;
  - (ii) for paragraph (2), there were substituted—
    - “(2) Any person guilty of an offence under this Article is liable—
      - (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both; and
      - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.”;
  - (iii) paragraph (3) were omitted;
- (o) in Article 32—
  - (i) in paragraph (1)—
    - (aa) sub-paragraphs (a) and (b) were omitted; and
    - (bb) for the words from “and it appears” to the end, there were substituted “ and it appears from the proceedings at the inquest that any of the relevant statutory provisions was contravened at a time which is material in relation to the subject-matter of the inquest, summary proceedings against any person liable to be proceeded against in respect of the contravention may be commenced at any time within three months of the conclusion of the inquest ”; and
  - (ii) paragraphs (3) and (4) were omitted;
- (p) in Article 33, for “any enforcing authority”, there were substituted “ the Health and Safety Executive for Northern Ireland ”;
- (q) in Article 36, for “enforcing authority which appointed him” there were substituted “ Health and Safety Executive for Northern Ireland ”; and
- (r) in Article 39, paragraphs (3A), (4) and (5) were omitted.

## SCHEDULE 5

Regulation 53(2)

### COMPLIANCE, WITHDRAWAL AND RECALL NOTICES

#### **Compliance notice**

1.—(1) The Executive may serve a compliance notice on a relevant economic operator in respect of a product if the Executive has reasonable grounds for believing that there is non-compliance.

(2) A compliance notice shall—

(a) require the relevant economic operator on which it is served to—

- (i) end the non-compliance within such period as may be specified in the notice; or
- (ii) provide evidence, within such period as may be specified in the notice, demonstrating to the satisfaction of the Executive that the non-compliance has not in fact occurred; and

(b) warn the economic operator that, if the non-compliance persists or if satisfactory evidence has not been produced under sub-paragraph (a) within the period specified in the notice, further action may be taken in respect of the product or any product of the same type made available on the market by the relevant economic operator.

(3) A compliance notice may include directions as to the measures to be taken by the economic operator to secure compliance, including different ways of securing compliance.

(4) Subject to sub-paragraph (5), the Executive may revoke or vary a compliance notice by serving a notification on the economic operator.

(5) The Executive may not vary a compliance notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

#### **Withdrawal notice**

2.—(1) The Executive may serve a withdrawal notice on a relevant economic operator in respect of a product if the Executive has reasonable grounds for believing that—

- (a) the product has been made available on the market; and
- (b) there is non-compliance.

(2) A withdrawal notice shall prohibit the relevant economic operator from making the product available on the market without the consent of the Executive.

(3) A withdrawal notice may require the relevant economic operator to take action to alert end-users to any risk presented by the product.

(4) A withdrawal notice may require the relevant economic operator to keep the Executive informed of the whereabouts of any product referred to in the notice.

(5) A consent given by the Executive pursuant to a withdrawal notice, may impose such conditions on the making available on the market as the Executive considers appropriate.

(6) Subject to sub-paragraph (7), the Executive may revoke or vary a withdrawal notice by serving a notification on the economic operator.

(7) The Executive may not vary a withdrawal notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

(8) A withdrawal notice has effect throughout Northern Ireland.

## Recall notice

3.—(1) The Executive may serve a recall notice on a relevant economic operator in respect of a product if the Executive has reasonable grounds for believing that—

- (a) the product has been made available to end-users; and
- (b) there is non-compliance.

(2) A recall notice shall require the relevant economic operator to use reasonable endeavours to organise the return of the product from end-users to the relevant economic operator or another person specified in the notice.

(3) A recall notice may—

- (a) require the recall to be effected in accordance with a code of practice;
- (b) require the relevant economic operator to—
  - (i) contact end-users in order to inform them of the recall, to the extent that it is practicable to do so;
  - (ii) publish a notice in such form and such manner as is likely to bring to the attention of end-users any risk the product poses and the fact of the recall; or
  - (iii) make arrangements for the collection or return of the product from end-users or its disposal; or
- (c) impose such additional requirements on the relevant economic operator as are reasonable and practicable with a view to achieving the return of the product.

(4) In determining what requirements to include in a recall notice, the Executive shall take into consideration the need to encourage distributors and end-users to contribute to its implementation.

(5) A recall notice may only be issued by the Executive where—

- (a) other action which it may require under these Regulations would not suffice to address the non-compliance;
- (b) the action being undertaken by the relevant economic operator is unsatisfactory or insufficient to address the non-compliance;
- (c) the Executive has given not less than 10 days' notice to the relevant economic operator of its intention to serve such a notice; and
- (d) the Executive has taken account of any advice obtained under sub-paragraph (6).

(6) A relevant economic operator which has received notice from the Executive of an intention to serve a recall notice may at any time prior to the service of the recall notice require the Executive to seek the advice of such person as the Institute determines on the questions of—

- (a) whether there is non-compliance; and
- (b) whether the issue of a recall notice would be proportionate.

(7) Sub-paragraphs (5)(b), (c) and (d) do not apply in the case of a product presenting a serious risk requiring, in the view of the Executive, urgent action.

(8) Where a relevant economic operator requires the Executive to seek advice under sub-paragraph (6), that relevant economic operator is to be responsible for the fees, costs and expenses of the Institute and of the person appointed by the Institute to advise the Executive.

(9) In this paragraph, “Institute” means the charitable organisation with registered number 803725 and known as the Chartered Institute of Arbitrators.

(10) A recall notice served by the Executive may require the relevant economic operator to keep the Executive informed of the whereabouts of a product to which the recall notice relates, so far as the relevant economic operator is able to do so.

**Changes to legislation:** There are currently no known outstanding effects for the The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017. (See end of Document for details)

(11) Subject to sub-paragraph 12, the Executive may revoke or vary a recall notice by serving a notification on the economic operator.

(12) The Executive may not vary a recall notice so as to make it more restrictive for the economic operator or more onerous for the economic operator to comply.

(13) A recall notice has effect throughout Northern Ireland.

**Interpretation**

- 4. In this Schedule, “non-compliance” means that the product—
  - (a) presents a risk; or
  - (b) is not in conformity with Part 2 or RAMS in its application to a product.

SCHEDULE 6

Regulation 40(b)

EU DECLARATION OF CONFORMITY (No. XXXX)

- 1. Product model/product (product, type, batch or serial number):
- 2. Name and address of manufacturer and, where applicable, the authorised representative:
- 3. This declaration of conformity is issued under the sole responsibility of the manufacturer.
- 4. Object of the declaration (identification of product allowing traceability; it may, where necessary for the identification of the product, include an image):
- 5. The object of the declaration described above is in conformity with the relevant Union harmonisation legislation:
- 6. References to the relevant harmonised standards used or references to the other technical specifications in relation to which conformity is declared:
- 7. Where applicable, the notified body (name, number) performed (description of intervention) and issued the certificate:
- 8. Additional information:
  - Signed for and on behalf of:
  - (place and date of issue):
  - (name, function) (signature):

SCHEDULE 7

Regulation 72(1)

AMENDMENTS

| <i>Column 1 Title</i>  | <i>Column 2 Reference</i>        | <i>Column 3 Extent of amendment</i>   |
|--|----------------------------------|---|
| Provision of Use at Work Equipment Regulations (Northern Ireland) 1999 | S.R. 1999 No. 305 <sup>M17</sup> | In column (1) of Schedule 2 for “Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations |

**Changes to legislation:** There are currently no known outstanding effects for the The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017. (See end of Document for details)

|   |  |
|---|--|
| <p>Dangerous Substances and Explosive Atmospheres Regulations (Northern Ireland) 2003</p> <p>S.R. 2003 No. 152 <sup>M18</sup></p> | <p>(Northern Ireland) 1996” substitute “ Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 ”; and In column (2) of Schedule 2 for “S.R. 1996 No. 247, amended by S.R. 1998 No. 77, S.R. 1999 No. 125 and S.R. 2008 No. 422” substitute “ S.R. 2017 No. 90 ”</p> |
|   | <p>In paragraph 1 of Schedule 3 for “Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996” substitute “ Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 ”</p>                           |

| <b>Marginal Citations</b> |  |
|---------------------------|--|
| <b>M17</b>                | S.R. 1999 No. 305, as amended by S.I. 1999/2001; S.R. 2000 No. 87; S.I. 2001/1701; S.R. 2003 No. 423; S.I. 2004/129; S.R. 2005 No. 279; S.R. 2005 No. 397; S.R. 2006 No. 1; S.R. 2007 No. 31; S.R. 2007 No. 291; S.R. 2008 No. 422; S.I. 2011/2157; S.R. 2012 No. 179; S.R. 2016 No. 146; S.R. 2016 No. 427; S.I. 2016/1092; S.I. 2016/1093; S.I. 2016/1101 and S.I. 2016/1105: revoked in part by S.R. 2007 No. 291 and S.R. 2015 No. 223 |
| <b>M18</b>                | S.R. 2003 No. 152, as amended by S.R. 2006 No. 173, S.R. 2010 No. 160, S.R. 2012 No. 177 and S.R. 2015 No. 265: revoked in part by S.R. 2016 No. 427   |

SCHEDULE 8

Regulation 72(2)

REVOCATIONS

| <i>Column 1 Title</i>  | <i>Column 2 Reference</i>        | <i>Column 3 Extent of revocation</i> |
|--|----------------------------------|--------------------------------------|
| Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996 | S.R. 1996 No. 247 <sup>M19</sup> | The whole Regulations                |

**Changes to legislation:** There are currently no known outstanding effects for the The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017. (See end of Document for details)

|  |                                     |                       |
|--|-------------------------------------|-----------------------|
| Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations (Northern Ireland) 1999 | S.R. 1999 No. 125<br><sup>M20</sup> | The whole Regulations |
| Electrical Equipment for Explosive Atmospheres (Certification) (Amendment) Regulations (Northern Ireland) 2000                         | S.R. 2000 No. 85<br><sup>M21</sup>  | The whole Regulations |
| Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations (Northern Ireland) 2008 | S.R. 2008 No. 422<br><sup>M22</sup> | The whole Regulations |

**Marginal Citations**

- M19** S.R. [1996 No. 247](#), amended by S.R. [1998 No. 77](#), S.R. [1999 No. 125](#) and S.R. [2008 No. 422](#)
- M20** S.R. [1999 No. 125](#)
- M21** S.R. [2000 No. 85](#), revoked in part by S.R. [2008 No. 422](#)
- M22** S.R. [2008 No. 422](#)

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

1. These Regulations transpose Directive 2014/34/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres (recast) (OJ L 96, 29.3.2014, p.309) (“the Directive”).

2. The Directive repeals and replaces Directive [94/9/EC](#) of the European Parliament and of the Council of 23 March 1994 on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres (OJ L 100, 19.4.1994, p.1) which was implemented in Northern Ireland by the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996 (S.R. 1996 No. 247) (as amended) (“the 1996 Regulations”). These Regulations revoke and replace the 1996 Regulations.



3. Regulation 3 defines a “product” for use within potentially explosive atmospheres or for incorporation into equipment and protective systems. Regulation 4 provides an exception, allowing the use of a product which is not in conformity with Part 2, for the purposes of trade fairs, exhibitions and demonstrations.

4. Part 2 sets out the obligations of economic operators. Regulations 5 to 17 set out the obligations specific to manufacturers. These obligations include ensuring that a product has been designed and manufactured in accordance with the essential health and safety requirements set out in Schedule 1, taking action where products are not in conformity, having a relevant conformity assessment procedure carried out, affixing the CE marking, obligations to retain technical documentation, appointment of authorised representatives and product requirements.

5. Regulations 18 to 27 set out the obligations that are specific to importers. These obligations include ensuring that importers are not placing on the market products which are not in conformity with the essential health and safety requirements and taking action where they are not, checking that the manufacturer has carried out a relevant conformity assessment procedure and labelled the products correctly, ensuring storage and transport conditions do not jeopardise conformity with essential health and safety requirements and product monitoring obligations.

6. Regulations 28 to 33 set out the obligations that are specific to distributors. These obligations include acting with due care to ensure that the product is in conformity with Part 2 and taking action where it is not, checking that the product bears the CE marking, ensuring storage and transport conditions do not jeopardise conformity with essential health and safety requirements and checking that the products are labelled correctly.

7. Regulations 35 to 37 set out the obligations that manufacturers, importers and distributors have. These obligations include prohibitions on the improper use of the CE marking and a requirement to translate the declaration of conformity into the language required by the Member States within which it is made available.

8. Part 3 sets out provisions concerning the conformity assessment procedure, declarations of conformity and CE marking.

9. Part 4 sets out provisions concerning the bodies which carry out conformity assessment procedures.

10. Part 5 sets out provisions for market surveillance and enforcement. Regulation 51 identifies the market surveillance authority which has an obligation to enforce the Regulations in respect of the products. Regulation 53 and Schedules 4 and 5 provide for the enforcement powers which the enforcing authorities are to have. Regulation 61 provides for the contravention of provisions to be an offence. Regulation 62 sets out the penalties that are to apply for offences.

11. Part 6 sets out transitional provisions and consequential amendments. The 1996 Regulations will continue to apply to any products which are in conformity and placed on the market prior to the 10th July 2017.

12. A transposition note and assessment of the impact that these Regulations will have on the costs of business, the voluntary sector and the public sector are available from the Health and Safety Executive for Northern Ireland, 83 Ladas Drive, Belfast, BT6 9FR and are also published with the Explanatory Memorandum which is available alongside these Regulations at [www.legislation.gov.uk](http://www.legislation.gov.uk).

13. In Great Britain the corresponding Regulations are the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 2016 (S.I. 2016/1107).

**Changes to legislation:**

There are currently no known outstanding effects for the The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017.