STATUTORY INSTRUMENTS

2016 No. 1107

The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 2016

PART 1

Preliminary

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 2016 and come into force on 8th December 2016 ("the commencement date").
 - (2) These Regulations extend to England, Wales and Scotland.

Commencement Information

II Reg. 1 in force at 8.12.2016, see reg. 1(1)

Interpretation

2.—(1) In these Regulations—

the "1974 Act" means the Health and Safety at Work etc Act 1974(1);

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(2)[F1 (as it has effect immediately before IP completion day)];

"the 1996 Regulations" means the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996(3);

[F2" approved body" has the meaning given to it in regulation 42;]

"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)(4);

"attestation of conformity" means a declaration of conformity required to be drawn up in accordance with regulation 7(3) (F4... declaration of conformity and [F5UK] Marking);

^{(1) 1974} c.37.

⁽²⁾ OJ L 100, 19.4.1994, p.1.

⁽³⁾ S.I. 1996/192; amended by S.I. 1998/81, S.I. 2001/3766, S.I. 2005/830, S.I. 2011/1043, S.I. 2012/1809, S.I. 2014/469 and S.I. 2014/3248.

⁽⁴⁾ OJ L 96, 29.3.2014, p. 309.

"authorised representative" means a person appointed in accordance with regulation 17(1); F6

F7 ...

"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;

[F8"conformity assessment activities" means any activities connected with conformity assessment including calibration, testing, certification and inspection;]

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

[F9" conformity assessment procedure" means a procedure referred to in regulation 39 (conformity assessment procedures);]

[F9" declaration of conformity" means a declaration of conformity required to be drawn up in accordance with regulation 7(1)(a) (declaration of conformity and UK marking);

[^{F9} designated standard" has the meaning given to it in regulation 2A;]

"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;

[F10"equipment category" means the classification of equipment, within each equipment group, specified in Schedule 1A to these Regulations;]

"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 [FII as set out in Schedule 1A to these Regulations];

"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 [F12as set out in Schedule 1A to these Regulations];

"essential health and safety requirements" means the requirements set out in Schedule 1 (essential health and safety requirements);

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"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;

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[F16"importer" means a person who—

(a) is established in the United Kingdom and places a product from a country outside of the United Kingdom on the market; or

(b) is established in Northern Ireland and places a product on the market that has been supplied to them for distribution, consumption or use in the course of a commercial activity, whether in return for payment or free of charge, from an EEA state;]

"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 [F17market of Great Britain] in the course of a commercial activity, whether in return for payment or free of charge, and related expressions are to be construed accordingly;

"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);

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"place on the market" means make a product available on the [F21 market of Great Britain] for the first time, and related expressions are to be construed accordingly;

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

"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 F22..., for the purposes for which it was intended, and related expressions are to be construed accordingly;

"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(5);

"recall" means taking any measure aimed at achieving the return of a product that has already been made available to the end-user and related expressions must be construed accordingly;

"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;

"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;

[F23"UK marking" means the marking in the form set out in Annex 2 of RAMS;]

[F23":UK national accreditation body" means the body appointed by the Secretary of State in accordance with Article 4 of RAMS;]

"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 and related expressions must be construed accordingly.

- [F24(1A)] Schedule 1A reproduces the provisions of Annex I to the ATEX Directive with amendments to correct deficiencies in retained EU law.
- (1B) A reference to a provision of Schedule 1A is a reference to the equivalent provisions of Annex I to the ATEX Directive as set out in Schedule 1A.
- (1C) Schedule 3A reproduces the provisions of Annexes III to IX to the ATEX Directive with amendments to correct deficiencies in retained EU law.
- (1D) A reference to any provision of Schedule 3A is a reference to the equivalent provisions of Annex III to IX of the ATEX Directive.]
 - (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 must be satisfied at or before the time at which they make the product available on the market.

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- (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.

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- F1 Words in reg. 2(1) inserted (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(2)(a) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2, and S.I. 2020/852, regs. 2(2), 4(2), Sch. 1 para. 1(n)(i)); 2020 c. 1, Sch. 5 para. 1(1)
- F2 Words in reg. 2(1) inserted (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(2)(b) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- F3 Words in reg. 2(1) omitted (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(2)(c) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- **F4** Word in reg. 2(1) omitted (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 25 para. 2(2)(d)(i)** (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- F5 Word in reg. 2(1) substituted (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(2)(d)(ii) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

- F6 Words in reg. 2(1) omitted (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(2)(f) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- F7 Words in reg. 2(1) omitted (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(2)(g) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- F8 Words in reg. 2(1) inserted (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(2)(h) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- F9 Words in reg. 2(1) inserted (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(2)(i) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- **F10** Words in reg. 2(1) substituted (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(2)(j) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- **F11** Words in reg. 2(1) substituted (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 25 para. 2(2)(k)** (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- F12 Words in reg. 2(1) substituted (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(2)(1) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- **F13** Words in reg. 2(1) omitted (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 25 para. 2(2)(m)** (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- Words in reg. 2(1) omitted (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(2)(n) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- F15 Words in reg. 2(1) omitted (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(2)(o) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- F16 Words in reg. 2(1) substituted (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(2)(p) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2 and S.I. 2020/1460, reg. 1(4), Sch. 3 para. 17(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F17 Words in reg. 2(1) substituted (31.12.2020) by S.I. 2019/696, Sch. 25 para. 2(2)(q) (as substituted by The Product Safety and Metrology etc. (Amendment to Extent and Meaning of Market) (EU Exit) Regulations 2020 (S.I. 2020/676), regs. 1(1), 4(13)(a))
- F18 Words in reg. 2(1) omitted (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(2)(r) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- **F19** Words in reg. 2(1) omitted (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 25 para. 2(2)(s)** (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- **F20** Words in reg. 2(1) omitted (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 25 para. 2(2)(t)** (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- F21 Words in reg. 2(1) substituted (31.12.2020) by S.I. 2019/696, Sch. 25 para. 2(2)(u) (as substituted by The Product Safety and Metrology etc. (Amendment to Extent and Meaning of Market) (EU Exit) Regulations 2020 (S.I. 2020/676), regs. 1(1), 4(13)(b))
- **F22** Words in reg. 2(1) omitted (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 25 para. 2(2)(v)** (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

- **F23** Words in reg. 2(1) inserted (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 25 para. 2(2)(w)** (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- F24 Reg. 2(1A)-(1D) inserted (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(3) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- F25 Reg. 2(3) omitted (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(4) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
- F26 Reg. 2(6) omitted (31.12.2020) by virtue of The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 2(5) (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I2 Reg. 2 in force at 8.12.2016, see reg. 1(1)

[F27Designated standard

- **2A.**—(1) Subject to paragraphs (6) and (7), in these Regulations a "designated standard" means a technical specification which is—
 - (a) adopted by a recognised standardisation body [F28 or an international standardising body], for repeated or continuous application, with which compliance is not compulsory; and
 - (b) designated by the Secretary of State by publishing the reference to the standard and maintaining that publication in a manner the Secretary of State considers appropriate.
- (2) For the purposes of paragraph (1), a "technical specification" means a document that prescribes technical requirements to be fulfilled by a product, process, service or system and which lays down one or more of the following—
 - (a) the characteristics required of a product, service or system, including—
 - (i) levels of quality, performance, interoperability, environmental protection, health, safety or dimensions, and
 - (ii) the requirements applicable to the product, service or system as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking or labelling and conformity assessment procedures; and
 - (b) production methods and processes relating to the product, where these have an effect on the characteristics of the product, service or system.
- (3) For the purposes of this regulation a "recognised standardisation body" means any one of the following organisations—
 - (a) the European Committee for Standardisation (CEN);
 - (b) the European Committee for Electrotechnical Standardisation (Cenelec);
 - (c) the European Telecommunications Standards Institute (ETSI);
 - (d) the British Standards Institution (BSI).

F²⁹(3A) In this regulation "international standardising body" has the same meaning as it has for the purposes of the Agreement on Technical Barriers to Trade, part of Annex 1A to the agreement establishing the World Trade Organisation signed at Marrakesh on 15 April 1994 (as modified from time to time).]

- (4) When considering whether the manner of publication of a reference is appropriate in accordance with paragraph (1)(b), the Secretary of State must have regard to whether the publication will draw the standard to the attention of any person who may have an interest in the standard.
- (5) Before publishing the reference to a technical specification adopted by the British Standards Institution, the Secretary of State must have regard to whether the technical specification is consistent with [F30 such] technical specifications adopted by the other recognised standardisation bodies [F31 or by international standardising bodies as the Secretary of State considers to be relevant.]
- (6) The Secretary of State may remove from publication the reference to a standard which has been published in accordance with paragraph (1)(b).
- (7) Where the Secretary of State removes the reference to a standard from publication, that standard is no longer a designated standard.
- (8) The Secretary of State may by regulations amend paragraph (3) to reflect any changes in the name or structure of the recognised standardisation bodies.
 - (9) Regulations made under paragraph (8) are to be made by statutory instrument.
- (10) A statutory instrument containing regulations made under paragraph (8) is subject to annulment in pursuance of a resolution of either House of Parliament.]
 - **F27** Reg. 2A inserted (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, **Sch. 25 para. 3** (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
 - **F28** Words in reg. 2A(1)(a) inserted (31.12.2020) by European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), **Sch. 4 para. 14(a)**; S.I. 2020/1662, reg. 2(ee)
 - **F29** Reg. 2A(3A) inserted (31.12.2020) by European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), Sch. 4 para. 14(b); S.I. 2020/1662, reg. 2(ee)
 - **F30** Word in reg. 2A(5) inserted (31.12.2020) by European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), Sch. 4 para. 14(c)(i); S.I. 2020/1662, reg. 2(ee)
 - **F31** Words in reg. 2A(5) inserted (31.12.2020) by European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), **Sch. 4 para. 14(c)(ii)**; S.I. 2020/1662, reg. 2(ee)

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;
 - (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 Council Directive 89/686/EEC on the approximation of the laws of the member States relating to personal protective equipment(6);
- (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;
- [F32(g)] products connected with the production of trade in arms, munitions and war material;]
 - (h) products which have been placed on the market before the commencement date.

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F32 Reg. 3(3)(g) substituted (31.12.2020) by The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/696), reg. 1, Sch. 25 para. 4 (with Sch. 25 para. 34) (as amended by S.I. 2020/676, regs. 1(1), 2); 2020 c. 1, Sch. 5 para. 1(1)
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Commencement Information

I3 Reg. 3 in force at 8.12.2016, see **reg. 1(1)**

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.

Commencement Information

I4 Reg. 4 in force at 8.12.2016, see reg. 1(1)

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 2016, PART 1.