

2023 No. 861

**EXITING THE EUROPEAN UNION, NORTHERN
IRELAND**

HEALTH AND SAFETY, NORTHERN IRELAND

**The Equipment and Protective Systems Intended for Use in
Potentially Explosive Atmospheres Regulations (Northern Ireland)
2017 (Amendment) (Northern Ireland) Regulations 2023**

Made - - - - *20th July 2023*

Coming into force - - *10th August 2023*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

In accordance with paragraph 8F(1)(b) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1. These Regulations—

- (a) may be cited as the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023;
- (b) come into force on the 21st day after the day on which they are made; and
- (c) extend to Northern Ireland only.

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

2. The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017(c) are amended in accordance with regulations 3 to 9.

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- (a) 2018 c. 16; section 8C was inserted by section 21 of the European Union (Withdrawal Agreement) Act 2020 (c. 1); paragraph 21 of Schedule 7 was amended by section 41(4) and Schedule 5, paragraph 53(2) of the Act; there are other amendments not relevant to these Regulations.
 - (b) Paragraph 8F of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 18) was inserted by section 41(4) and Schedule 5, paragraph 51 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).
 - (c) S.R. 2017 No. 90. They were made under section 2(2) of the European Communities Act 1972 (c. 68) and are accordingly saved by virtue of section 2(1) of the European Union (Withdrawal) Act 2018.

Amendments to Part 1 (Preliminary)

3.—(1) In regulation 2(1)—

- (a) in the definition of “accreditation certificate”, for “Member State or Great Britain” substitute “relevant state”;
- (b) in the definition of “competent national authority”, for “Member State” substitute “relevant state”;
- (c) in the definition of “importer”—
 - (i) in sub-paragraph (a) for “EU” substitute “relevant market”;
 - (ii) in sub-paragraph (b) for “third country on the EU” substitute “market outside the relevant market on the relevant”;
- (d) in the following definitions, for “EU” substitute “relevant”—
 - (i) “make available on the market”;
 - (ii) “place on the market”;
 - (iii) “putting into service”;
- (e) after the definition of “potentially explosive atmosphere” insert—

““product” means a product to which these Regulations apply, in accordance with regulation 3;”;
- (f) after the definition of “relevant economic operator” insert—

““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;”;
 - (g) at the end of the definition of “technical specification” omit “and”; and
 - (h) after the definition of “technical specification” insert—

““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(a);

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

(2) In regulation 2(3)(b), for “Member State” substitute “relevant state”.

(3) Omit regulation 2(6).

(4) In regulation 2(7)—

- (a) for “(Northern Ireland) 1954” substitute “1978(b)”; and
- (b) omit “as it applies to an Act of the Assembly”.

(5) In regulation 3(3)(d), for “Council Directive 89/686/EEC on the approximation of the laws of the Member States relating to personal protective equipment(c)” substitute “Regulation (EU)

(a) S.I. 2020/1460.

(b) 1978 c. 30.

(c) O.J. L 399, 30.12.1989, p. 18–38.

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(a)".

Amendments to Part 2 (Obligations of Economic Operators)

- 4.—(1) In regulation 6(b)—
- (a) in paragraph (ii), for “39(1)(b)” substitute “39(1)(b)(i)”; and
 - (b) in paragraph (iii), after “regulation” insert “39(1)(b)(ii) or”.
- (2) In regulation 7—
- (a) in paragraph (3), for “39(3)” substitute “39(3)(b)”; and
 - (b) in paragraph (6)—
 - (i) for “a declaration” substitute “an EU declaration”;
 - (ii) before “declaration” in the second place in which it occurs, insert “EU”.
- (3) In regulations 13(3), 14(1) and (3), 15(2), 21(2), 22(1) and (2), 25(2), 29(1)(a)(iv) and 37(1), for “Member State” substitute “relevant state”.
- (4) In regulations 14(3), 22(2) and 37(2), for “the United Kingdom” substitute “Northern Ireland”.
- (5) In regulation 17(1), for “the EU” substitute “a relevant state”.
- (6) In regulation 32(2), for “Member States” substitute “relevant states”.

Amendments to Part 3 (Conformity Assessment)

- 5.—(1) In regulation 39(5) and (6), for “Member State” substitute “relevant state”.
- (2) After regulation 41 insert—

“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.

Register of notified bodies established in the United Kingdom

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

(a) O.J. L 81, 31.3.2016, p. 51–98.

- (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).”.

Amendments to Part 4 (Notification of Conformity Assessment Bodies)

6.—(1) In regulation 42(1)—

(a) for sub-paragraph (a) substitute—

“(a) which has been notified by the Secretary of State to the European Commission and other relevant states; and”;

(b) in sub-paragraph (b)—

(i) after “objections” insert “, other than an immaterial objection,”; and

(ii) for “Member States” substitute “relevant states”.

(2) After regulation 42(1) insert—

“(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.”.

(3) In regulations 43(1), 44 (8 times), 46 (twice), 47 (twice), 48 (11 times) and 50 (3 times), for “Executive” substitute “Secretary of State” .

(4) In regulations 44 (twice), and 48(4), for “, the other Member States and Great Britain” substitute “and other relevant states” .

(5) In regulation 44—

(a) in paragraph (1), omit “established within Northern Ireland”; and

(b) in paragraph (7), for “Northern Ireland’s” substitute “the United Kingdom’s”.

Amendments to Part 5 (Market Surveillance and Enforcement)

7.—(1) In regulation 56—

(a) in paragraph (3), for “inform the European Commission, Great Britain and the other Member States” substitute “notify the Secretary of State”;

(b) after paragraph (3) insert—

“(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.”;
- (c) after paragraph (5) insert—
 - “(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.”; and
 - (d) in paragraph (6), for “notice in paragraph (5) shall” substitute “notices in paragraphs (5) and (5A) must”.
- (2) In regulations 56(5), 57(1) and 58(2), for “European Commission, Great Britain and the other Member States” substitute “Secretary of State”.
- (3) In regulation 57—
- (a) in paragraph (1)—
 - (i) for “Member State” in the first place in which it occurs substitute “relevant state”;
 - (ii) at the end of sub-paragraph (a) insert “and”;
 - (iii) in sub-paragraph (b), for “product; and” substitute “product.”;
 - (iv) omit sub-paragraph (c);
 - (b) after paragraph (1) insert—
 - “(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.”;
 - (c) in paragraphs (2) and (3), for “Member State” substitute “relevant state”;
 - (d) in paragraph (2), after “are taken” insert “in Northern Ireland”;
 - (e) in paragraph (4), for “inform the European Commission” substitute “notify the Secretary of State”; and
 - (f) after paragraph (4) insert—
 - “(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.”.
- (4) After regulation 58(2) insert—
- “(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.”.
- (5) After regulation 59(1)(a) insert—
- “(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;”.
- (6) In regulation 61(1), for “35 or 36” substitute “35, 36 or 41A”.

Amendment to Part 6 (Miscellaneous)

- 8.—(1) In regulation 71(1), for “Member State” substitute “relevant state”.
(2) After regulation 71 insert—

“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.”.

Amendment to Schedule 2 (Notified Body Requirements)

9. In Schedule 2—
(a) in paragraph 1, for “Northern Ireland or in Great Britain” substitute “the United Kingdom”;
(b) in paragraphs 15 and 17, for “Executive” substitute “Secretary of State” .

20th July 2023

Kevin Hollinrake
Parliamentary Under Secretary of State
Department for Business and Trade

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Windsor Framework requires that the European Union (“EU”) legislation listed in its Annex 2 is implemented in Northern Ireland.

One of the Directives listed in Annex 2 is 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 ATEX Directive”).

The ATEX Directive was implemented in Northern Ireland by the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (S.R. 2017 No. 90) (“the ATEX Regulations”), whilst the United Kingdom was still a member of the EU.

These Regulations amend the ATEX Regulations to reflect that no part of the United Kingdom is part of the EU, whilst ensuring the ATEX Directive and the Windsor Framework are implemented in respect of Northern Ireland.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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£4.90

<http://www.legislation.gov.uk/id/uksi/2023/861>

ISBN 978-0-34-825061-9



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