
STATUTORY INSTRUMENTS

1996 No. 192

**The Equipment and Protective Systems Intended for Use
in Potentially Explosive Atmospheres Regulations 1996**

PART I

PRELIMINARY

Citation, commencement, extent and revocation

1.—(1) These Regulations, which extend to Great Britain, may be cited as the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996 and shall come into force on 1st March 1996.

(2) The Regulations specified in the first column of Schedule 1 hereto are hereby revoked with effect from the date specified in the second column of that Schedule.

Interpretation

2.—(1) In these Regulations—

- (a) the “ATEX Directive” means Directive [94/9/EC](#) of the European Parliament and the Council on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres⁽¹⁾; and
- (b) except for the references to the European Communities in the definition of “the Commission” and in relation to the Official Journal, a reference to the Community includes a reference to the EEA, and a reference to a member State includes a reference to an EEA State: for the purposes of this sub-paragraph—
 - (i) the “EEA” means the European Economic Area;
 - (ii) an “EEA State” means a State which is a Contracting Party to the EEA Agreement⁽²⁾; and
 - (iii) the “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.⁽³⁾

(2) In these Regulations, unless the context otherwise requires—

- “CE marking” or “CE conformity marking” is a reference to a marking consisting of the initials “CE” in the form shown in Schedule 2 hereto;
- “the Commission” means the Commission of the European Communities;
- “component” has the meaning given by regulation 3(2)(d) below;

(1) OJ No. L100, 19.4.94, p. 1.

(2) The EEA Agreement came into force in relation to Liechtenstein on 1st May 1995 (OJ No. L86, 20.4.95, p. 58).

(3) The application of the ATEX Directive was extended to the EEA from 1st December 1994 by virtue of Decision 14/94 of the EEA Joint Committee (OJ No. L325, 17.12.94, p. 65) which inserted a reference to that Directive at point 7A in Chapter X of Annex II to the EEA Agreement.

“devices” and “devices referred to in Article 1(2)” have the meaning given by regulation 3(2) (c) below;

“enforcement authority” means the Health and Safety Executive established under section 10 of the Health and Safety at Work etc. Act 1974⁽⁴⁾;

“essential health and safety requirements” means the requirements in Annex II of the ATEX Directive which is set out in Schedule 3 hereto;

“equipment” has the meaning given by regulation 3(2)(a) below;

“equipment-category” and “category” in relation to an equipment-group shall be construed by reference to the criteria set out in Annex I of the ATEX Directive which is set out in Schedule 4 hereto;

“equipment group I” means equipment intended for use in underground parts of mines, and to those parts of surface installations of such mines, liable to be endangered by firedamp and/or combustible dust;

“equipment group II” means equipment intended for use in places, other than those which are specified for equipment group I, liable to be endangered by explosive atmospheres;

“explosive atmosphere” and “potentially explosive atmosphere” shall be construed respectively in accordance with regulation 3(2)(f) and (g) below;

“harmonized standard” means a technical specification adopted by the European Committee for Standardisation or the European Committee for Electrotechnical Standardisation or both, upon a mandate from the Commission in accordance with Council Directive 83/189/EEC of 28th March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁽⁵⁾, and of which the reference number is published in the Official Journal of the European Communities;

“intended use” shall be construed in accordance with regulation 3(2)(e) below;

“notified body” shall be construed in accordance with regulation 11 below;

“protective systems” has the meaning given by regulation 3(2)(b) below;

“relevant essential health and safety requirements” in relation to equipment, a protective system or device means those provisions of the essential health and safety requirements which are applicable to that particular equipment, protective system or device, account being taken of its intended use;

“responsible person” means, in relation to equipment, a protective system, device or component,

- (a) the manufacturer of that equipment, protective system, device or component;
- (b) the manufacturer’s authorized representative established in the Community; or
- (c) where the manufacturer is not established in the Community and either—
 - (i) he has not appointed an authorized representative established in the Community; or
 - (ii) his authorized representative established in the Community is not the person who places that equipment, protective system, device or component on the market,
 - the person who places it on the market in the community;

“safe” in relation to equipment, a protective system or a device means that, when properly installed and maintained and used for its intended purpose, it does not endanger the health

⁽⁴⁾ 1974 c. 37.

⁽⁵⁾ OJ No. L109, 26.4.83, p. 8. Council Directive 83/189/EEC was amended by Council Directive 88/182/EEC (OJ No. L81, 26.3.88, p. 75), Commission Decision 92/400/EEC (OJ No. L221, 6.8.92, p. 55) and Directive 94/10/EC of the European Parliament and the Council (OJ No. L100, 19.4.94, p. 30).

and safety of persons and, where appropriate, domestic animals or property and cognate expressions shall be construed accordingly;

“standard” or “standard referred to in Article 5” means a technical specification approved by a recognised standardising body for repeated or continuous application, with which compliance is not compulsory: and, for the avoidance of doubt, this definition includes a harmonized standard or a transposed harmonized standard;

“supply” includes offering to supply, agreeing to supply, exposing for supply and possessing for supply and cognate expressions shall be construed accordingly; and

“transposed harmonized standard” means a national standard of a member State which transposes a harmonized standard.

PART II

APPLICATION

Equipment, Protective Systems, Devices and Components

3.—(1) Subject to regulations 4 and 5 below, these Regulations apply to equipment and protective systems intended for use in potentially explosive atmospheres, devices and components.

(2) For the purposes of these Regulations,

- (a) “equipment” means machines, apparatus, fixed or mobile devices, control components and instrumentation thereof 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 and which are capable of causing an explosion through their own potential sources of ignition;
- (b) “protective systems” means design units which are intended to halt incipient explosions immediately and/or to limit the effective range of explosion flames and explosion pressures; protective systems may be integrated into equipment or separately placed on the market for use as autonomous systems;
- (c) “devices” means 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;
- (d) “component” means any item essential to the safe functioning of equipment and protective systems but with no autonomous function;
- (e) “intended use” means the use of equipment, protective systems, and devices in accordance with the equipment group and category and with all the information supplied by the manufacturer which is required for the safe functioning of equipment, protective systems and devices;
- (f) “explosive atmosphere” means the 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; and
- (g) “potentially explosive atmosphere” means an atmosphere which could become explosive due to local and operational conditions.

Excluded equipment, protective systems, devices and components

4. These Regulations do not apply—

- (a) to the equipment, protective systems and devices specified in Schedule 5 hereto; and

- (b) components for the equipment, protective systems or devices referred to in paragraph (a) above.

Exclusion until 30th June 2003 of equipment and protective systems complying with health and safety provisions in force on 23rd March 1994

5.—(1) Subject to paragraph (2) below, these Regulations do not apply to equipment or a protective system placed on the market in the Community on or before 30th June 2003 which complies with any health and safety provisions with which it would have been required to comply for it to be lawfully placed on the market in Great Britain on 23rd March 1994.

(2) The exclusion provided in paragraph (1) above does not apply in the case of equipment or a protective system which—

- (a) unless required to bear the CE marking pursuant to any other Community obligation, bears the CE marking or an inscription liable to be confused therewith; or
- (b) bears or is accompanied by any other indication, howsoever expressed, that it complies with the ATEX Directive.

(3) In this regulation, “health and safety provisions” means any requirement imposed by an enactment which has the same, or substantially the same, effect as any of the essential health and safety requirements and which would, but for the provisions of this regulation, be applicable to that equipment or protective system for the purposes of complying with these Regulations.

PART III

GENERAL REQUIREMENTS

General duty relating to the placing on the market of equipment, protective systems or devices by a responsible person

6.—(1) Subject to regulation 9 below, no person who is a responsible person shall place on the market any equipment, protective system or device to which these Regulations apply unless the requirements of paragraph (2) below have been complied with in relation thereto.

(2) The requirements of this paragraph, in respect of any equipment, protective system or device, are that—

- (a) it satisfies the relevant essential health and safety requirements and, for the purpose of satisfying those requirements,
- (i) where a transposed harmonized standard covers one or more of the essential health and safety requirements, any equipment, protective system or device constructed in accordance with that transposed harmonized standard shall be presumed to comply with that or, as the case may be, those essential health and safety requirements; and
- (ii) a certificate of conformity to the harmonized standards specified in the Electrical Equipment for Explosive Atmospheres (Certification) Regulations 1990(6) (“the 1990 Regulations”) and obtained in accordance with the procedures for obtaining such certificates in the 1990 Regulations shall continue to be valid for the purposes of these Regulations until 30th June 2003 (unless it expires before that date) in respect of any electrical equipment, as defined in the 1990 Regulations, which conforms to the type covered by the said certificate;

(6) [S.I. 1990/13](#); relevant amending instruments are [S.I. 1990/2377](#), [1991/2826](#), [1995/1186](#).

- (b) the appropriate conformity assessment procedure, in accordance with regulation 10(1) below, has been carried out—
 - (i) by the manufacturer; or
 - (ii) where permitted by that procedure, wholly or partly as the case may be, by the manufacturer's authorized representative established in the Community,save that,
 - (aa) where the procedure in Annex III, VI or VIII of the ATEX Directive (which are respectively set out in Schedules 6, 9 and 11 hereto) is part of or, as the case may be, is the appropriate conformity assessment procedure; and
 - (bb) the person placing the equipment, protective system or device on the market is neither the manufacturer nor his authorized representative established in the Community,the obligation to retain the technical documentation, required as part of that appropriate conformity assessment procedure, shall be fulfilled by the person who places that equipment, protective system or device on the market;
- (c) the CE marking has been affixed to it by the manufacturer or his authorized representative established in the Community in accordance with Schedule 2 hereto and Schedule 2 shall have effect for that purpose; and
- (d) it is in fact safe.

General duty relating to the supply of equipment, protective systems or devices by a person other than the responsible person

7.—(1) Subject to paragraph (2) below, it shall be the duty of any person who supplies any equipment, protective system or device to which these Regulations apply, but who is not a person to whom regulation 6 above applies, to ensure that that equipment, protective system or device is safe.

(2) Without prejudice to any other safety requirement which may apply in respect of such equipment, protective system or device, this regulation does not apply to—

- (a) equipment, a protective system or device which has been placed on the market in the Community before 1st March 1996; or
- (b) the supply of any equipment, protective system or device which has previously been put into service in the Community.

General duty relating to the placing on the market of components by a responsible person

8.—(1) Subject to regulation 9(a) below, no person who is a responsible person shall place on the market any component to which these Regulations apply unless the requirements of paragraph (2) below have been complied with in relation thereto.

(2) The requirements of this paragraph, in respect of any component, are that—

- (a) the appropriate conformity assessment procedure, in accordance with regulation 10(2) below, has been carried out by the person specified in regulation 6(2)(b) above; and
- (b) it is accompanied by a certificate which has been issued by the manufacturer or his authorized representative established in the Community and which—
 - (i) declares the conformity of the component with the provisions of the ATEX Directive which apply to it; and
 - (ii) states its characteristics and how it must be incorporated into equipment or protective systems to assist compliance with the essential requirements applicable to finished equipment or protective systems.

Exceptions to placing on the market in respect of certain equipment, protective systems, devices and components

9. For the purposes of regulation 6 or 8 above, equipment, a protective system, device or, in the case of paragraph (a) below, a component shall not be regarded as being placed on the market—

- (a) where that equipment, protective system, device or component
 - (i) will be put into service in a country outside the Community; or
 - (ii) is imported into the Community for re-export to a country outside the Community, save that this paragraph shall not apply if the CE marking, or any inscription liable to be confused therewith, is affixed thereto; or
- (b) by the exhibition at trade fairs and exhibitions of that equipment, protective system or device, provided that where the provisions of these Regulations are not satisfied—
 - (i) a notice is displayed in relation to the equipment, protective system or device in question to the effect—
 - (aa) that it does not satisfy those provisions; and
 - (bb) that it may not lawfully be placed on the market until the responsible person has ensured that those provisions are satisfied; and
 - (ii) adequate safety measures are taken to ensure the safety of persons.

Conformity assessment procedures

10.—(1) Subject to paragraphs (4) and (5) below, for the purposes of regulation 6(2)(b) above, the appropriate conformity assessment procedure shall—

- (a) in the case of equipment and, where necessary, a device, be determined in accordance with paragraph (3) below by reference to the equipment-group and equipment-category of that particular equipment or, as the case may be, device; and
- (b) in the case of an autonomous protective system, be the procedure set out in paragraph (3) (a) or (d) below.

(2) For the purposes of regulation 8(2)(a) above, in the case of a component the appropriate conformity assessment procedure shall be the procedure set out in paragraph (3) below, which relates to the equipment or protective system into which that component is to be incorporated, with the exception of the affixing of the CE marking.

(3) The procedures referred to in paragraphs (1) and (2) above are as follows:

- (a) without prejudice to sub-paragraph (d) below, in the case of equipment-group I and II, equipment-category M 1 and 1, the manufacturer or his authorized representative established in the Community must, in order to affix the CE marking, follow the EC type-examination procedure (referred to in Annex III of the ATEX Directive, which is set out in Schedule 6 hereto), in conjunction with:
 - (i) the procedure relating to production quality assurance (referred to in Annex IV of the ATEX Directive, which is set out in Schedule 7 hereto); or
 - (ii) the procedure relating to product verification (referred to in Annex V of the ATEX Directive, which is set out in Schedule 8 hereto);
- (b) without prejudice to sub-paragraph (d) below, in the case of equipment-group I and II, equipment-category M 2 and 2,
 - (i) in the case of internal combustion engines and electrical equipment in these groups and categories, the manufacturer or his authorized representative established in the Community shall, in order to affix the CE marking, follow the EC-type examination

procedure (referred to in Annex III of the ATEX Directive, which is set out in Schedule 6 hereto), in conjunction with:

- (aa) the procedure relating to conformity to type referred to in Annex VI of the ATEX Directive (which is set out in Schedule 9 hereto); or
 - (bb) the procedure relating to product quality assurance referred to in Annex VII of the ATEX Directive (which is set out in Schedule 10 hereto); and
- (ii) in the case of other equipment in these groups and categories, the manufacturer or his authorized representative established in the Community must, in order to affix the CE mark, follow the procedure relating to internal control of production (referred to in Annex VIII of the ATEX Directive, which is set out in Schedule 11 hereto) and communicate the dossier, provided for in paragraph 3 of Annex VIII, to a notified body, which shall acknowledge receipt of it as soon as possible and shall retain it;
- (c) without prejudice to sub-paragraph (d) below, in the case of equipment-group II, equipment-category 3, the manufacturer or his authorized representative established in the Community must, in order to affix the CE marking, follow the procedure relating to internal control of production referred to in Annex VIII of the ATEX Directive (which is set out in Schedule 11 hereto); or
- (d) in the case of equipment-groups I and II, as an alternative to the procedures referred to in sub-paragraphs (a), (b) and (c) above, the manufacturer or his authorized representative established in the Community may, in order to affix the CE marking, follow the procedure relating to CE unit verification (referred to in Annex IX of the ATEX Directive, which is set out in Schedule 12 hereto).

(4) In the case of equipment, protective systems or devices, the manufacturer or his authorized representative established in the Community may, in order to affix the CE marking, follow the procedure relating to internal control of production (referred to in Annex VIII of the ATEX Directive, which is set out in Schedule 11 hereto) with regard to the safety aspects referred to in point 1.2.7 of Annex II of the ATEX Directive (which is set out in Schedule 3 hereto).

(5) Notwithstanding the previous paragraphs of this regulation, the Secretary of State may, on a duly justified request, authorize the placing on the market and putting into service of equipment, protective systems and individual devices referred to in Article 1(2) in respect of which the procedures referred to in the previous paragraphs have not been applied and the use of which is in the interests of protection.

(6) Documents and correspondence relating to the procedures referred to in the above-mentioned paragraphs shall be drawn up in one of the official languages of the member States in which those procedures are being applied or in a language accepted by the notified body to which an application is made pursuant to one of those procedures.

Notified bodies

11. For the purposes of these Regulations, a notified body is a body which has been appointed to carry out one or more of the conformity assessment procedures specified in Article 8 of the ATEX Directive and referred to in regulation 10 above which has been—

- (a) appointed as a notified body in Great Britain pursuant to regulation 12 below;
- (b) appointed as a notified body in Northern Ireland; or
- (c) appointed by a member State other than the United Kingdom,

and in the case of (a), (b) and (c) above has been notified by the member State concerned to the Commission and the other member States pursuant to Article 9(1) of the ATEX Directive.

Notified bodies appointed by the Secretary of State

12.—(1) The Secretary of State may from time to time appoint such qualified persons as he thinks fit to be notified bodies for the purposes of these Regulations.

(2) An appointment—

- (a) may relate to all descriptions of equipment, protective systems, devices or components or such descriptions (which may be framed by reference to any circumstances whatsoever) of equipment, protective systems, devices or components as the Secretary of State may from time to time determine;
- (b) may be made subject to such conditions as the Secretary of State may from time to time determine, and such conditions may include conditions which are to apply upon or following termination of the appointment;
- (c) shall, without prejudice to the generality of sub-paragraph (b) above, require that body, subject to paragraph (4) below, to carry out the procedures and specific tasks for which it has been appointed including (where so provided as part of those procedures) surveillance to ensure that the manufacturer duly fulfils the obligations arising out of the relevant quality assurance procedure;
- (d) shall be terminated—
 - (i) if it appears to the Secretary of State that the notified body is no longer a qualified person; or
 - (ii) upon 90 days' notice in writing to the Secretary of State, at the request of the notified body; and
- (e) may be terminated if it appears to the Secretary of State that any of the conditions of the appointment are not complied with.

(3) Subject to paragraph (2)(d) and (e) above, an appointment under this regulation may be for the time being or for such period as may be specified in the appointment.

(4) A notified body appointed by the Secretary of State shall not be required to carry out the functions referred to in paragraph (2)(c) above if—

- (a) the documents submitted to it in relation to carrying out such functions are not in English or another language acceptable to that body;
- (b) the person making the application has not submitted with its application the amount of the fee which the body requires to be submitted with the application pursuant to regulation 13 below; or
- (c) the body reasonably believes that, having regard to the number of applications made to it in relation to its appointment under these Regulations which are outstanding, it will be unable to commence the required work within 3 months of receiving the application.

(5) If for any reason the appointment of a notified body is terminated under this regulation, the Secretary of State may authorise another notified body to take over its functions in respect of such cases as he may specify.

(6) A notified body which is responsible, as part of any of the conformity assessment procedures referred to in regulation 10 above, for the assessment of the conformity of electrical equipment placed on the market before 1st July 2003, shall take account of the results of tests and verifications already carried out in respect of the harmonized standards which are applicable under—

- (a) Council Directive [76/117/EEC](#)(7) and Council Directive [79/196/EEC](#)(8); or

(7) OJ No. L24, 30.1.76, p. 45.

(8) OJ No. L43, 20.2.79, p. 20. Council Directive [79/196/EEC](#) was adapted to technical progress by Commission Directives [84/47/EEC](#) (OJ No. L31, 2.2.84, p. 19), [88/571/EEC](#) (OJ No. L311, 17.11.88, p. 46) and [94/26/EC](#) (OJ No. L157, 24.6.94,

(b) Council Directive [82/130/EEC](#)(9).

(7) If a notified body, to which an application has been made for an EC type-examination certificate pursuant to the EC type-examination procedure (referred to in Annex III of the ATEX Directive and set out in Schedule 6 hereto), is not satisfied that the requirements for such a certificate are met and is minded to refuse to issue an EC type-examination certificate, it shall—

- (a) inform the applicant in writing of the reasons why it proposes to refuse to issue an EC type-examination certificate;
- (b) give the applicant the opportunity, within a reasonable period, of making representations as to why it should not be refused; and
- (c) if, after considering any representations made pursuant to sub-paragraph (b) above, it remains unsatisfied in respect of those requirements, it shall—
 - (i) notify its decision in writing to the applicant stating the grounds on which the refusal is based; and
 - (ii) inform the applicant in writing of the procedure which it has established whereby an appeal may be made against that decision.

(8) In this regulation—

“qualified person” means a person (which may include the Secretary of State) who meets the minimum criteria; and

“minimum criteria” means the criteria set out in Annex XI of the ATEX Directive (minimum criteria to be taken into account by member States for the notification of bodies)(10).

Fees

13.—(1) Without prejudice to the power of the Secretary of State, where he is a notified body, to charge fees pursuant to regulations made under section 56 of the Finance Act 1973(11) and subject to paragraph (2) below, a notified body appointed by the Secretary of State, other than the Secretary of State, may charge such fees in connection with, or incidental to, carrying out its duties in relation to the functions referred to in regulation 12(2)(c) above as it may determine; provided that such fees shall not exceed the sum of the following—

- (a) the costs incurred or to be incurred by the notified body in performing the relevant function; and
- (b) an amount on account of profit which is reasonable in the circumstances having regard to—
 - (i) the character and extent of the work done or to be done by the body on behalf of the applicant; and
 - (ii) the commercial rate normally charged on account of profit for that work or similar work.

(2) The power in paragraph (1) above includes the power to require the payment of fees or a reasonable estimate thereof in advance of carrying out the work requested by the applicant.

p. 33) and was amended by Council Directives [88/665/EEC](#) (OJ No. L382, 31.12.88, p. 42) and [90/487/EEC](#) (OJ No. L270, 2.10.90, p. 23).

(9) OJ No. L59, 2.3.82, p. 10. Council Directive [82/130/EEC](#) was adapted to technical progress by Commission Directives [88/35/EEC](#) (OJ No. L20, 26.1.88, p. 28), [91/269/EEC](#) (OJ No. L134, 29.5.91, p. 51) and [94/44/EC](#) (OJ No. L248, 23.9.94, p. 22).

(10) Notified bodies meeting the assessment criteria laid down in the relevant harmonized standards are presumed to meet the minimum criteria.

(11) [1973 c. 51](#).

*Supplementary provisions***Conditions for equipment, protective systems, devices and components being taken to comply with the provisions of the ATEX Directive**

- 14.—(1) Subject to paragraph (2) below,
- (a) equipment, a protective system or device—
 - (i) which is accompanied by an EC declaration of conformity—
 - (aa) issued in respect of it by the manufacturer or his authorized representative established in the Community; and
 - (bb) containing the elements set out in Schedule 13 hereto; and
 - (ii) to which the CE marking is affixed in accordance with regulation 6(2)(c) above; or
 - (b) a component which is accompanied by a certificate, which has been issued in accordance with regulation 8(2)(b) above,

shall be taken to comply with all the provisions of the ATEX Directive including the appropriate conformity assessment procedure specified in regulation 10 above, unless there are reasonable grounds for suspecting that it does not so comply.

- (2) Paragraph (1) above does not apply—
- (a) in relation to the enforcement authority where the responsible person fails or refuses to make available to the enforcement authority the documentation which he is required, by the conformity assessment procedure which applies to that equipment, protective system, device or component, to retain or a copy thereof; or
 - (b) in the case of equipment, a protective system or device
 - (i) which is supplied in the circumstances described in regulation 7(2)(b) above; and
 - (ii) to which the CE marking is indelibly affixed.

PART IV**ENFORCEMENT****Application of Schedule 14**

15.—(1) Subject to paragraph (2) below, Schedule 14 shall have effect for the purposes of providing for the enforcement of these Regulations and for matters incidental thereto.

(2) Except in the case of equipment, a protective system or device which, in the opinion of the enforcement authority, is not safe, where the enforcement authority has reasonable grounds for suspecting that the CE marking has not been correctly affixed to equipment, a protective system or device, as the case may be, it may give notice in writing to the responsible person who placed that equipment, protective system or device, on the market and, subject to paragraph (3) below, no action pursuant to Schedule 14 may be taken, and no proceedings may be brought pursuant to regulation 16 below, in respect of that equipment, protective system or device, as the case may be, until such notice has been given and the person to whom it is given has failed to comply with its requirements.

(3) Notwithstanding the provisions of paragraph (2) above, for the purpose of ascertaining whether or not the CE marking has been correctly affixed, action may be taken pursuant to section 20 of the Health and Safety at Work etc. Act 1974(12) as it is applied by Schedule 14.

- (4) Notice which is given under paragraph (2) above shall—
- (a) state that the enforcement authority suspects that the CE marking has not been correctly affixed to the equipment, protective system or device, as the case may be;
 - (b) specify the respect in which it is so suspected and give particulars thereof;
 - (c) require the person to whom the notice is given—
 - (i) to secure that any equipment, protective system or device, as the case may be, to which the notice relates conforms as regards the provisions concerning the correct affixation of the CE marking within such period as may be specified in the notice; or
 - (ii) to provide evidence within that period, to the satisfaction of the enforcement authority, that the CE marking has been correctly affixed; and
 - (d) warn that person that if the non-conformity continues after (or if satisfactory evidence has not been provided within) the period specified in the notice, further action may be taken under the Regulations in respect of that equipment, protective system or device, as the case may be, or any equipment, protective system or device of the same type placed on the market by that person.
- (5) For the purposes of this regulation, the CE marking is correctly affixed to equipment, a protective system or device, as the case may be, if—
- (a) it has been affixed in accordance with regulation 6(2)(c) above; and
 - (b) the appropriate conformity assessment procedure has been carried out in respect of that equipment, protective system or device in accordance with regulation 6(2)(b) above.

Offences

16. Any person who contravenes or fails to comply with regulation 6, 7 or 8 above shall be guilty of an offence.

Penalties

17. A person guilty of an offence under regulation 16 above shall be liable on summary conviction—

- (a) to imprisonment for a term not exceeding 3 months; or
- (b) to a fine not exceeding level 5 on the standard scale,

or to both.

Defence of due diligence

18.—(1) Subject to the following provisions of this regulation, in proceedings against any person for an offence under regulation 16 above it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided by paragraph (1) above involves an allegation that the commission of the offence was due—

- (a) to the act or default of another; or
- (b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings (or, in Scotland, the trial diet), he has served a notice under paragraph (3) below on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time he serves it.

(4) It is hereby declared that a person shall not be entitled to rely on the defence provided by paragraph (1) above by reason of his reliance on information supplied by another, unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular—

- (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

Liability of persons other than the principal offender

19.—(1) Where the commission by any person of an offence under regulation 16 above is due to the act or default committed by some other person in the course of any business of his, the other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1) above) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) In this regulation, references to a “body corporate” include references to a partnership in Scotland and, in relation to such partnership, any reference to a director, manager, secretary or other similar officer of a body corporate is a reference to a partner.

Amendment and disapplication of law in Great Britain

General provisions

20.—(1) In sub-paragraph (d) of regulation 19(2) of The Electricity at Work Regulations 1989(13), for the words “Commission Directive 88/35/EEC(14)” there shall be substituted the words “Commission Directives 88/35/EEC(15), 91/269/EEC(16) and 94/44/EC(17)” and, for the purposes of the enforcement of that sub-paragraph, this substitution shall have effect as if it had been made under section 15 of the Health and Safety at Work etc. Act 1974(18).

(2) Subject to regulation 1(2) above, in respect of any equipment, protective system, device or component to which these Regulations apply, there shall be disapplied—

- (a) in the Coal and Other Mines (Locomotives) Regulations 1956(19)—

(13) S.I. 1989/635.

(14) OJ No. L20, 26.1.88, p. 28.

(15) OJ No. L20, 26.1.88, p. 28.

(16) OJ No. L134, 29.5.91, p. 51.

(17) OJ No. L248, 23.9.94, p. 22.

(18) 1974 c. 37; section 15 was amended by the Employment Protection Act 1975 (c. 71), Schedule 15, paragraph 6. There are other amendments to section 15 which are not relevant to this provision.

(19) S.I. 1956/1771.

- (i) paragraphs (1) and (2) of regulation 3; and
- (ii) regulations 4 and 5;
- (b) in both The Bentinck Mine (Diesel Engined Stone Dusting Machine) Regulations 1976⁽²⁰⁾ and The Point of Ayr Mine (Diesel Vehicles) Regulations 1980⁽²¹⁾, regulation 4; and
- (c) in the Regulations specified in the first column of Schedule 15 hereto, the regulations respectively specified in the third column of that Schedule.

Consequential amendment of the Provision and Use of Work Equipment Regulations 1992

21.—(1) At the end of Schedule 1 to the Provision and Use of Work Equipment Regulations 1992⁽²²⁾, there shall be added the following—

“**37.** European Parliament and Council Directive [94/9/EC](#) on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres (OJNo. L100, 19.4.94, p. 1).”.

(2) These Regulations shall have effect for the purposes of the enforcement of regulation 10 of the Provision and Use of Work Equipment Regulations 1992 as if the addition of the reference to the ATEX Directive in Schedule 1, effected by paragraph (1) above, had been made under section 15 of the Health and Safety at Work etc. Act 1974.

Ian Taylor
Parliamentary Under-Secretary of State for
Science and Technology,
Department of Trade and Industry

1st February 1996

⁽²⁰⁾ [S.I. 1976/2046](#).
⁽²¹⁾ [S.I. 1980/1705](#).
⁽²²⁾ [S.I. 1992/2932](#).