



**THE EQUIPMENT AND PROTECTIVE SYSTEMS INTENDED FOR USE IN
POTENTIALLY EXPLOSIVE ATMOSPHERES (AMENDMENT)
REGULATIONS (NORTHERN IRELAND) 2008 S.R. 2008 NO. 422**

Impact Assessment

An Impact Assessment (IA) is a tool, which informs policy decisions. All NI Government Departments must comply with the impact assessment process when considering any new, or amendments to, existing policy proposals. Where regulations or alternative measures are introduced an IA should be used to make informed decisions. The IA is an assessment of the impact of policy options in terms of the costs, benefits and risks of the proposal. New regulations should only be introduced when other alternatives have first been considered and rejected and where the benefits justify the costs.

The IA process is not specific to the UK Civil Service or the NI Civil Service – many countries use a similar analysis to assess their proposed regulations and large organisations appraise their investment decisions in similar ways too.

Please find enclosed a final IA in respect of the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations (Northern Ireland) 2008.

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NOTE ON COSTS AND BENEFITS

1. I declare that:

- (a) the purpose of the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations (Northern Ireland) 2008 (“the Northern Ireland Regulations”) is to replicate, for Northern Ireland, the provisions of the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations 2001 (S.I. 2001/3766) and the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations 2005 (S.I. 2005/830); and
- (b) I have seen a Northern Ireland impact assessment and I am satisfied with the conclusions therein.

2. A copy of the final Northern Ireland impact assessment relating to the Northern Ireland Regulations is appended to this note.

M. Bohill

A Senior Officer of the Department of Enterprise, Trade and Investment

20 October 2008

FINAL IMPACT ASSESSMENT FOR

THE EQUIPMENT AND PROTECTIVE SYSTEMS INTENDED FOR THE USE IN POTENTIALLY EXPLOSIVE ATMOSPHERES (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2008 (“THE PROPOSALS”)

1. This is the final impact assessment for proposals to amend the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996 (“the principal Regulations”), which implemented Directive 94/9/EC (“the Directive”).

PURPOSE AND INTENDED EFFECT

2. The main effect of the proposals are to: -
 - a. include the activity of “taking into service” of equipment, protective systems or devices (hereinafter referred to as “equipment”) in addition to placing it on the market;
 - b. incorporate the Corrigenda to the Directive published in the Official Journal of the European Communities in L21/42 published 26th January 2000 and L304/19 published on 5th December 2000. These Corrigenda were issued by the European Commission following the identification of linguistic divergences between the different language versions of the Directive; and
 - c. amend the penalty provisions to allow a breach of the Regulations to be tried in a Crown Court as well as by a Magistrate, with the possibility of increased penalties for non-compliance.

TAKING INTO SERVICE

3. Currently, the general duty in the Regulations only covers the situation of a product being “placed on the market”, and does not cover when equipment is “taken into service”. The main effect of this omission is to allow certain users, who either manufacture or import (from a third country) equipment for their own use, to avoid the requirements of the Regulations. This could result in an iniquitous market advantage for this limited category of user, although there is unlikely to be a safety issue as such equipment would still be covered by UK national safety legislation. Such a group is very small. The proposed amendment would ensure that the activity of taking into service is covered.

Costs

4. The effect of including the “taking into service” provision will have limited but complex consequences for different players in the affected sectors. Most manufacturers and distributors will be based in Great Britain and users are most likely to obtain stock/equipment from other parts of the United Kingdom and should therefore be complying with the Regulations already in place there. It is estimated that costs will be marginal.

Manufacturers selling product to others

5. No change.

Manufacturers building equipment for own use

6. The numbers of relevant self-made products may amount to no more than five items per annum. Of these, maybe two will require third party assessment and the likely direct cost would be; 2 x £10,000 assessment cost per product, so the additional total cost to industry in Northern Ireland would be £20,000 p.a.

Distributors

7. Although electrical distributors could be expected to be aware of the requirements of the Directive, the non-electrical industry distributors are likely to be less aware.

Users

8. Business users, rather than consumers, may be holding stocks of spare equipment for emergency use and such equipment may only be used after an assembly operation, installation or other manipulation to that equipment has taken place, hence bringing the equipment within the scope of the requirements of the principal Regulations. User businesses are the least likely to be aware that they could be subject to the Regulations, particularly where they are installing and commissioning large scale equipment or parts. The industries involved are likely to be very large and there could be some large non-industrial users holding large stocks of equipment, in the public sector, such as the health service.

Business sectors affected

9. Mainly large scale and heavy industries such as; mining operations, petrochemicals, pharmaceuticals and other processing industries and plants where a build-up of vapours, mists, gasses or dusts can create potentially explosive atmospheres.
10. The spread of business sectors affected by these Regulations is very diverse, covering: manufacturers of basic electrical and lighting equipment; electrical and mechanical equipment and control systems; heating and

refrigeration plants; chemical industry plant and machinery; pumps and mining machinery equipment manufacture; other manufacturing process equipment manufacture. However, it is likely that the great majority of them will be producing or selling electrical equipment for normal use ie not for use in potentially explosive atmospheres.

Impact on small businesses

11. This amendment is unlikely to have any direct effect on small businesses. The nature of the industry (and the inherent risks) suggests that only the larger firms are likely to engage in making equipment for their own use in a potentially explosive atmosphere.

THE CORRIGENDA

12. The changes will have no cost effect on industry.

PENALTY PROVISIONS

13. As full compliance with the principal Regulations is assumed, the change to the level of penalty being introduced by the proposals will have no cost effect on industry.
14. The change to the level of penalty will have a direct effect only on those found in breach of the principal Regulations. It will not impose any direct cost on legitimate businesses as it does not impose any new duties on any party or increase the costs involved in complying with those Regulations.
15. There is a possibility that the change could lead some legitimate businesses to anticipate harsher enforcement of the principal Regulations and that this might lead some of them to devote additional resources to ensure that they continue to meet the requirements. However, there would be no actual change to the enforcement regime as a result of this change and the same penalties will apply to minor breaches as apply now. Enforcement officers as well as the courts will continue to be able to exercise their judgement as to the most appropriate course of action in individual cases.
16. Legitimate businesses should welcome the possibility of higher penalties as a deterrent to less scrupulous competition that may have avoided the more expensive aspects of compliance. These competitors should no longer be able to calculate the probable cost of any fine against the cost of compliance in considering whether to risk non-compliance. The higher potential cost of non-compliance will make such judgements harder to make.

SECURING COMPLIANCE

17. The Health & Safety Executive for Northern Ireland (HSENI) is responsible for the enforcement of the Regulations at present and will continue with this responsibility following the amendment. HSENI has regular contact with manufacturers, distributors and users in this field. Industry has been informed of these changes via the consultation exercise and will continue to be advised as part of the routine HSENI inspection and enforcement procedures.

October 2008

Department of Enterprise,
Trade and Investment