

Department of Enterprise, Trade and Investment

Proposals for Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations (Northern Ireland) 2008

Consultative Document

February 2008

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

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This Consultative Document is based on two Great Britain Consultative Documents “The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996 – Proposal to amend the Regulations” (23 January 2001) and “The Pressure Equipment Regulations 1999 Proposal to: (i) amend the regulations for non-commercial manufacture and import for own use by amateur model engineers (ii) adjust the penalty provisions so that they are more consistent with those in other related legislation” (13 December 2001). Both were issued by the former Department of Trade and Industry (“DTI”), now the Department of Business Enterprise and Regulatory Reform (“BERR”), whose assistance is gratefully acknowledged.

If you would prefer a printed version, it can be obtained on request. Furthermore, if you require a more accessible format, executive summaries are available in Braille or large print, on disc or audio-cassette, or in Irish, Ulster Scots and other languages of the minority ethnic communities in Northern Ireland. To obtain a summary in one of these formats, please contact Colette McKay at the address shown at paragraph 18.

INTRODUCTION

1. This Consultative Document (“CD”) seeks comments on proposals from the Department of Enterprise, Trade and Investment (“the Department”) for Regulations to amend the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996 (S.R. 1996 No. 247) (“the principal Regulations”).
2. The proposed Regulations will be known as the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations (Northern Ireland) 2008 (see **Annex 1**). They will be closely based on corresponding Great Britain (“GB”) amending Regulations, namely 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).
3. The principal Regulations implemented for Northern Ireland, Directive 94/9/EC of the European Parliament and the Council, (“the Directive”), and came into operation on 29 July 1996. The main reason for this amendment to the principal Regulations is to include the activity of taking into service of equipment in addition to placing it on the market. It would also take account of the corrigendum (O.J. No. L21, 26.1.2000, p.42) to the Directive issued by the European Commission (“EC”) following the identification of linguistic divergences between the different language versions of the Directive.
4. There is also a proposal to 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.
5. Finally, regulation 4 makes a consequential amendment and regulation 5 makes associated revocations.

BACKGROUND

6. As previously mentioned, the main reason for this amendment to the principal Regulations is to include the activity of taking into service of equipment in addition to placing it on the market. Currently the absence of this activity may prove to be a problem in the case of a product being manufactured by an end user where a product is not placed on the market but is put into service in the course of a business. In this case, the current implementation will not apply the Directive’s requirements in respect of equipment which is solely put into service. This activity needs to be subject to the requirements of the Directive and therefore should fall within the scope of the principal Regulations.

7. There are two additional functions of this amendment. The first is to take account of the recent corrigendum (O.J. No. L21, 26.1.2000, p.42) to the Directive issued by the EC following the identification of linguistic divergences between the different language versions of the Directive. This is a matter of clarification and there are no foreseen effects on costs for industry.
8. The second is to amend the penalty provisions to bring them into line with those contained in the corresponding GB Regulations. It will also have the effect of aligning the penalty provisions with those that already apply in other UK-wide product safety legislation such as the Pressure Equipment Regulations 1999 (S.I. 1999/2001) and the Supply of Machinery (Safety) Regulations 1992 (S.I. 1992/3073). This amendment would have the effect of allowing a breach of the Regulations to be tried in a Crown Court as well as by a Magistrate. This would make it possible for longer custodial sentences and higher fines to be imposed on indictment rather than the present maximum of three months and £5,000.
9. Due to concerns about the level of penalty applicable in product safety legislation a Joint Strategic Review Group (“JSRG”) was set up in Great Britain to consider what options might be available to address this issue.
10. Bearing in mind the possible severity of consequences to the health and safety of people and damage to property which might arise from a breach of legislation a review of several Regulations which implemented product safety Directives was undertaken. Certain sets of Regulations were identified where it was considered appropriate to increase the range of penalties available. Those Regulations included: -
 - The Supply of Machinery (Safety) Regulations 1992 (S.I. 1992/3073) **(UK-wide)**;
 - The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996 (S.I. 1996/192) **(GB only)**; and
 - The Pressure Equipment Regulations 1999 (S.I. 1999/2001) **(UK-wide)**.
11. A consultation, as regards the proposed increase of the penalties, took place in 2002 and no substantive comments were received. Subsequently the penalty provisions in all the above named Regulations were amended.
12. It is now considered appropriate to amend the penalty provisions in the principal Regulations to bring them into line with the corresponding GB Regulations. It will also align the penalty provisions in the principal

Regulations with those contained in the above named UK-wide Regulations that are already in force in Northern Ireland.

13. The additional following points are considered to be particularly worthy of note:

(a) regulation 3(2)(b) – the definition of “responsible person” in the principal Regulations would be expanded in scope to include a person who places equipment, protective systems, devices or components on the market in the circumstances described in that definition; and

(b) regulation 3(2)(c) would amend the principal Regulations to clarify that the principal Regulations will not apply to a manufacturer or importer of equipment, protective systems or devices for own use where such equipment is not used in the course of a business.

RELATIONSHIP WITH GREAT BRITAIN

14. The proposals set out in this CD do not differ in any significant way from amendments made to the corresponding GB Regulations (see the acknowledgement on page 1 of this CD). Such differences as do occur relate only to Northern Ireland legislation and institutions. As both the GB and Northern Ireland principal Regulations, taken together, are intended to implement a European Directive, it is essential that the same legal requirements apply throughout the United Kingdom.

INITIAL IMPACT ASSESSMENT

15. A copy of the initial impact assessment (IA) prepared for the proposals is at **Annex 2**. It indicates that amendments to the principal Regulations will have a limited impact on the affected sectors and the overall cost to Northern Ireland industry will be negligible. Comments on the conclusions in the IA would be welcome.

EQUALITY IMPACT

16. The proposals have been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or differential aspects were identified. A copy of the screening document is at **Annex 3**.

INVITATION TO COMMENT

17. The Department would welcome your comments on the proposals in this CD. Comments are particularly welcome on the assumptions relating to costs relevant to Northern Ireland and the conclusion that the proposals would have no adverse effect on any section 75 groups.

18. Comments, in whatever format you choose to use, should be sent to: -

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Business Regulation
Department of Enterprise, Trade and Investment
1st Floor Waterfront Plaza
8 Laganbank Road
Belfast BT1 3BS
Tel: (028) 9090 5310 Fax: (028) 9090 5291
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so as to arrive not later than noon on **Friday 2 May 2008**.

19. The Department tries to make its consultation procedures as thorough and open as possible. Responses to this consultation will be kept at the office of Health and Safety Executive for Northern Ireland at 83 Ladas Drive, Belfast, BT6 9FR after the close of this consultation period, where they can be inspected by members of the public or be copied to them. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality given by you in response to this consultation.
20. The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity should be made public or be treated as confidential. If you do not wish information about your identity to be made public, please include an explanation in your response.
21. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances.

February 2008

Department of Enterprise, Trade and
Investment

**DRAFT 24TH OCTOBER 2007 STATUTORY RULES
OF NORTHERN IRELAND**

2008 No. 000

HEALTH AND SAFETY

**The Equipment and Protective Systems Intended for Use in
Potentially Explosive Atmospheres (Amendment) Regulations
(Northern Ireland) 2008**

Made - - - - ***
Coming into operation - ***

The Department of Enterprise, Trade and Investment(**a**), makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**b**). The Department has been designated for the purposes of that section in relation to measures relating to equipment and protective systems intended for use in potentially explosives atmospheres(**c**) and for safety and consumer protection as respects electrical equipment and any provisions concerning the composition, labelling, marketing, classification or description of electrical equipment(**d**).

Citation and commencement

1. These Regulations may be cited as the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations (Northern Ireland) 2008 and shall come into operation on [DATE].

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 Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres(**e**); and
- (b) the “principal Regulations” means the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996(**f**).

(2) The Interpretation Act (Northern Ireland) 1954(**g**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(a) 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
(b) 1972 c. 68: the enabling powers conferred by section 2(2) were extended by section 1 of the European Economic Area Act 1993 (c. 51)
(c) S.I. 1995/751
(d) S.I. 1972/1811 and S.I. 1993/2661
(e) O.J. No. L100, 19.4.94 p. 1, as amended by corrigendum, O.J. No. L21, 26.1.2000 p. 42
(f) S.R. 1996 No. 247, as amended by S.R. 1998 No. 77 and S.R. 1999 No. 125
(g) 1954 c. 33 (N.I.)

Amendment of the principal Regulations

- 3.—(1) The principal Regulations shall be amended in accordance with paragraphs (2) to (16).
- (2) In regulation 2(2) (Interpretation)—
- (a) in the definition of “harmonized standard” for “Council Directive No. 83/189/EEC of 28th March 1983”, substitute “Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998(a)”; and
 - (b) in the definition of “responsible person”—
 - (i) after the first occurrence of “on the market”, insert “or puts that equipment, protective system or device into service”; and
 - (ii) after the second occurrence of “on the market”, insert “or puts it into service”; and
 - (c) after paragraph (4), add the following paragraph—

“(5) For the purposes of these Regulations, equipment, protective systems or devices shall not be regarded as having been put into service where a person—

 - (a) being a manufacturer of equipment, protective systems or devices for his own use; or
 - (b) having imported equipment, protective systems or devices from a country or territory outside the Community for his own use,

puts that equipment, protective system or device into service otherwise than in the course of a business.”.
- (3) In regulation 3(2) (Equipment, protective systems, devices and components)—
- (a) in sub-paragraph (a), for “or the processing of material” substitute “and the processing of material, as the case may be,”; and
 - (b) for sub-paragraph (b) substitute—

“(b) “protective systems” means devices other than components of equipment which are intended to halt incipient explosions immediately or limit the effective range of an explosion or both, as the case may be, and which systems are separately placed on the market for use as autonomous systems;”.
- (4) In regulation 6(1) (General duty relating to the placing on the market of equipment, protective systems or devices by a responsible person), after “place on the market”, insert “or put into service”.
- (5) In regulation 8(2)(b) (General duty relating to the placing on the market of components by a responsible person), for “certificate” substitute “written attestation”.
- (6) In regulation 9 (Exceptions to placing on the market in respect of certain equipment, protective systems, devices and components), for “device” where it first appears substitute “or device shall not be regarded as being placed on the market and put into service”.
- (7) For regulation 11 (Notified bodies), substitute—
- “**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 and which has been—
- (a) appointed as a notified body in Northern Ireland pursuant to regulation 12;
 - (b) appointed as a notified body in Great Britain;
 - (c) appointed by a member State other than the United Kingdom; or
 - (d) recognised for the purpose of carrying out the relevant procedure by inclusion in a mutual recognition agreement, relating to the ATEX Directive, or a similar agreement (including a Protocol to the European Agreement, or other Agreement,

(a) O.J. No. L204, 21.7.98, p.37; Directive 98/34/EC has been amended by Directive 98/48/EC of the European Parliament and of the Council (O.J. No. L217, 5.8.98, p.18)

on Conformity Assessment and Acceptance of Industrial Products) which has been concluded between the European Community and a State other than a member State,

and in the case of (a), (b) and (c) 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.”.

(8) In regulation 14(1)(b) (Conditions for equipment, protective systems, devices and components being taken to comply with the provisions of the ATEX Directive), for “certificate” substitute “written attestation”.

(9) For regulation 16 (Offences and penalties) substitute—

“**16.** Any person who contravenes regulation 6, 7 or 8 shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment 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.”.

(10) In Schedule 1 (The CE marking and other inscriptions)—

- (a) in paragraph 5, for “equipment and protective systems” substitute “equipment, protective systems and devices”; and
- (b) in paragraph 9, for both occurrences of “equipment or protective systems” substitute “equipment, protective systems or devices”.

(11) In Schedule 2 (Essential health and safety requirements)(a)—

- (a) in requirement 1.1.3, for “impact” substitute “mechanical”;
- (b) in requirement 1.2.3—
 - (i) for “developing” substitute “releases of”; and
 - (ii) for “escapes” substitute “releases”;
- (c) in requirement 1.2.7(d), for “shall” substitute “do”;
- (d) in requirement 1.5.1—
 - (i) after “measurement or control devices” insert “or both measurement and control devices”; and
 - (ii) for “For electrical circuits the” substitute “The”;
- (e) in the heading to requirement 2.1.1, for “*hazes*” substitute “*mists*”.

(12) In Schedule 3 (Criteria determining the classification of equipment-groups into categories)(b), paragraph 2(b) after “occur” insert “occasionally”.

(13) In Schedule 5 (Module: EC type-examination)(c), paragraph 5, for “relevant” substitute “significant”.

(14) In Schedule 7 (Module: Product verification)(d), paragraph 4.1, for “equipment” where it last occurs substitute “equivalent”.

(15) In Schedule 8 (Module: Conformity to type)(e), paragraph 2, omit “or protective systems”.

(16) In Schedule 9 (Module: Product quality assurance)(f), paragraph 3—

- (a) in paragraph 3.1, omit “and protective systems”; and
- (b) in paragraph 3.2, for “instruments” substitute “instructions”.

(a) Annex II to the ATEX Directive
 (b) Annex I to the ATEX Directive
 (c) Annex III to the ATEX Directive
 (d) Annex V to the ATEX Directive
 (e) Annex VI to the ATEX Directive
 (f) Annex VII to the ATEX Directive

Consequential amendment of the Provision and Use of Work Equipment Regulations (Northern Ireland) 1999

4. In the second column of Schedule 2 to the Provision and Use of Work Equipment Regulations (Northern Ireland) 1999(a), relating to the entry for the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996 in the first column, for the reference “S.R. 1996 No. 247, amended by S.R. 1999 No. 125” substitute “S.R. 1996 No. 247, amended by S.R. 1998 No. 77, S.R. 1999 No. 125 and S.R. 2008 No. xx”.

Revocations

5. The Electrical Equipment for Explosive Atmospheres (Certification) (Amendment) Regulations (Northern Ireland) 1999(b) and regulation 3 of the Electrical Equipment for Explosive Atmospheres (Certification) (Amendment) Regulations (Northern Ireland) 2000(c) are revoked.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on [DATE]



M. Bohill

A senior officer of the Department of Enterprise, Trade and Investment

(a) 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 and S.R. 2006 No. 1
(b) S.R. 1999 No. 124
(c) S.R. 2000 No. 85

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations amend the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996 (S.R. 1996 No. 247, as amended by S.R. 1998 No. 77 and S.R. 1999 No. 125) (“the principal Regulations”), which implemented 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 (the ATEX Directive), to give effect to a corrigendum to the ATEX Directive (O.J. No. L21, 26.1.2000, p.42) which makes typographical changes (*regulation 3(3), (6), (9), and (11) to (17)*).

2. These Regulations also amend the principal Regulations by—

- (a) amending the definition of “harmonised standard” to reflect the consolidation of Council Directive 83/189/EEC (as amended) in Directive 98/34/EC (O.J. No. L204, 21.7.98, p.37) (*regulation 3(2)(a)*);
- (b) amending the definition of “responsible person” to include, in certain circumstances, a person who puts equipment, protective systems, devices or components into service (*regulation 3(2)(b)*);
- (c) making provision that the activity of putting into service shall not be regarded as having taken place in certain circumstances (*regulation 3(2)(c)*);
- (d) amending regulation 6 to provide a general duty on responsible persons not to put equipment, protective systems or devices into service unless certain requirements specified in the principal Regulations have been complied with (*regulation 3(4)*);
- (e) substituting the wording for regulation 11 to reflect the recognition of notified bodies under various agreements (*regulation 3(7)*); and
- (f) increasing the range of penalties available (in regulation 16) for offences under the principal Regulations (*regulation 3(9)*).

3. These Regulations also make a consequential amendment (*regulation 4*) and revocations (*regulation 5*) to other legislation.

4. In Great Britain, the corresponding Regulations are 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). A copy of the cost benefit assessment relating to these Regulations together with a Northern Ireland Supplement are held at the offices of the Health and Safety Executive for Northern Ireland at 83 Ladas Drive, Belfast BT6 9FR from where copies may be obtained on request.

TRANSPOSITION NOTES

1. These amending Regulations have two purposes; first to perfect the transposition of 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 (O.J. No. L100, 19.4.94, p.1) (“the Directive”) in respect of the activity of putting into service such equipment and systems and, secondly, to give effect to a corrigendum to the Directive (O.J. No. L21, 26.1.2000, p.42) which makes provision for a number of typographical changes, as opposed to changes of substance, to the Directive.

2. The Regulations identified below transpose and give effect to the Articles of the Directive or the paragraphs of the corrigendum, as the case may be, as specified through amendments to the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996 (S.R. 1996 No. 247): -

- (a) regulations 3(2)(b) and (c) and (4) transpose in part Articles 2, 3, 4.1, 7.1 and 8 by extending obligations to meet those requirements in the Directive which relate to the activity of putting equipment and systems into service to such persons who undertake that activity;
- (b) regulation 3(6) transposes in part Article 2 by ensuring that appropriate exceptions to the scope of the application of the Directive extend to the activity of putting equipment and systems into service;
- (c) regulations 3(3), 3(5), 3(8), 3(10) to 3(16) give effect to paragraphs 1, 2, 4, 6 to 13 inclusive, 15 to 23 inclusive, 26, 29 and 31 to 33 inclusive of the corrigendum to the Directive to correct a number of typographical errors.

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

1. This is an initial 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 Corrigendum to the Directive published in the Official Journal of the European Communities in L21/42 published 26th January 2000. This Corrigendum was 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, distributors and users will be based in Great Britain or obtain stock/equipment from other parts of the United Kingdom and

should therefore be complying with the Regulations already in place there. Respondent's views are welcome as to the likely costs of these proposals.

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 CORRIGENDUM

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 will be informed of these changes during consultation and afterwards.

Consultation

18. There will be a three month consultation period with a much wider range of interested parties. It is hoped that the consultation process will result in our receiving better information to evaluate the impact of the changes on industry and others.

February 2008

Department of Enterprise,
Trade and Investment

EQUALITY IMPACT SCREENING DOCUMENT

Proposals for Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations (Northern Ireland) 2008

Summary

The Department of Enterprise, Trade and Investment (“the Department”) has screened the above proposals for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998. No adverse or differential aspects were identified and the Department concludes that a full Equality Impact Assessment is not necessary in this case. However, the Department will, if necessary, review the position in the light of any comments received as a result of consultation (see paragraph 3.3 below).

The following sections set out the Department’s screening process.

Section 1 - The Legal Background

Under section 75 of the Northern Ireland Act 1998, the Department is required to have due regard to the need to promote equality of opportunity:

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and
- between persons with dependants and persons without.

Without prejudice to the obligations set out above, the Department is also required, in carrying out its functions relating to Northern Ireland, to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinion or racial group.

Section 2 –Proposals to be screened

2.1 Title of proposals

This screening concerns proposals for the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations (Northern Ireland) 2008 (“the proposals”).

2.2 Brief description of proposals

The Department proposes to make health and safety Regulations under the European Communities Act 1972.

The proposals involve the amendment of the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 1996 (S.R. 1996 No. 247) (“the principal Regulations”), which came into operation on 29 July 1996.

2.3 Aims/objectives of proposals

The main aims and objectives of the proposals are to amend the principal Regulations, which implemented for Northern Ireland, Directive 94/9/EC of the European Parliament and the Council by:

- (a) including the activity of taking equipment into service in addition to placing it on the market;
- (b) taking account of a recent corrigendum to the Directive issued following the discovery of linguistic divergences between different language versions of the Directive; and
- (c) increasing the range of penalties available.

2.4 Persons affected by the proposals

The proposed Regulations will affect employers who take equipment into service without placing them on the market. They may also affect employees who work with equipment taken into service without them being placed on the market. The business sectors affected will be 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. However, in reality, as Northern Ireland has relatively few of these large scale heavy industries, it is deemed that few people will be affected by the proposals.

2.5 Responsibility for devising and delivering the proposals

The Department is responsible for drawing up the proposals and enacting the legislation.

2.6 Available data

In assessing the impact of the proposals, frequency of convictions for breach of the principal Regulations is a major factor.

Since those Regulations came into operation, there have been no prosecutions for non-compliance with them.

Section 3 – Screening Analysis

3.1 Participation or Uptake

The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations (Northern Ireland) 2008, which amend the principal Regulations, apply universally. It therefore seems unlikely that the inclusion of taking equipment into service or the trying of offences under the principal Regulations, rather than under the Health and Safety at Work (Northern Ireland) Order 1978, would have any unequal bearing on any of the groups identified by any of the following characteristics:

Religious belief	Sexual orientation
Political opinion	Sex
Racial group	Disability
Age	Dependency
Marital status	

3.2 Needs, experiences, issues and priorities

The proposals are designed to increase the protection of employees by extending legislative requirements to equipment brought into use without being placed on the market. Therefore they would extend equally to all of the following groups:

Religious belief	Sexual orientation
Political opinion	Sex
Racial group	Disability
Age	Dependency
Marital status	

3.3 Consultation with relevant groups

This screening document will be included in the Department's consultative document on the proposals, and the views of all groups listed in paragraphs 3.1 and 3.2 will be actively sought. The conclusions and the screening process will be reviewed in the light of comments made or information received.

3.4 Promotion of equality of opportunity or community relations

The proposals will not directly promote equality of opportunity. However, it will ensure that Northern Ireland is in the same position as Great Britain in relation to health and safety law.

3.5 Obligation to have due regard to the need to promote equality of opportunity

For the reasons cited in paragraph 3.4, it is not considered that these proposals present any significant risk to the Department's obligation to have due regard to the need to promote equality of opportunity.

3.6 Differential impact

The proposals have been developed to address an anomaly and to enable cases to be tried under the appropriate legislation. There should be no differential impact on any group.

Section 4 - EQIA Recommendation

4.1 Estimated impact

The proposals would only have an impact in the minority of cases where equipment is brought into use without being placed on the market. The greater part of the equipment is used by heavy industry, of which there is little in Northern Ireland.

In view of this, it is considered that the proposals would not have any significant impact on social need, on people's daily lives or on economic, social and human rights.

4.2 Scale of expenditure

For the reasons set out in paragraph 4.1, it is considered that the proposals will have no significant impact in terms of costs and benefits.

4.3 Need for full Equality Impact Assessment (EQIA)

Subject to the outcome of consultation with relevant groups it is considered that these proposals should not be subject to a full EQIA.

4.4 Future monitoring

The requirements of the Regulations will be monitored by the Health and Safety Executive for Northern Ireland through the normal compliance procedures.

Section 5 – Disability Duties

Under the Disability Discrimination Act 1995 (as amended by the Disability Discrimination (Northern Ireland) Order 2006) the Department is required to have due regard to the need:

- to promote positive attitudes towards disabled people; and
- to encourage participation by disabled people in public life.

These proposals will only have a limited impact in a minority of cases where equipment is brought into use without being placed on the market. The greater part of the equipment is used by heavy industry, of which there is little in Northern Ireland. As a result there is limited scope for these proposals to contribute towards promoting positive attitudes towards disabled people or towards encouraging participation by disabled people in public life.

February 2008

Department of Enterprise,
Trade and Investment

Name

Age Concern
 Agent for the Copyright Libraries
 Alliance Party
 Allpipe Engineering Ltd
 Amalgamated Engineering and Electrical Union
 Amalgamated Transport and General Workers Union
 AMEY BPO
 AMICUS
 Antrim Enterprise Agency
 Ards Business Centre
 Argyle Business Centre
 Armagh Business Centre Ltd
 Association of British Insurers
 Association of Chief Officers of Voluntary Organisations
 Association of Consulting Engineers (NI Branch)
 Association of Independent Advice Centres
 Association of Local Authorities of Northern Ireland
 Association of Teachers and Lecturers
 Association of University Teachers
 Atlas Environmental NI
 Autism Northern Ireland
 Baha'i Office for Northern Ireland
 Bakers, Food and Allied Workers Union
 Ballymena Business Development Centre Ltd
 Banbridge Enterprise Centre
 Bar Council
 Barnardos
 Belcoo Enterprise Ltd
 Belfast Centre for the Unemployed
 Belfast City Centre Management
 Belfast City Council
 Belfast Education and Library Board
 Belfast Harbour Commissioners
 Belfast Hebrew Congregation
 Belfast Marine Engineering Employers' Association
 Belfast Traveller Education and Development Group
 Borough Councils
 Boxmore Plastics Limited
 British Clothing Industry Association (NI)
 British Deaf Association (NI)
 British Medical Association
 British Oxygen Company
 Brookfield Business Centre Ltd
 Bryson House
 Business in the Community
 Calor Gas (NI) Limited
 Cara-Friend
 Carers NI

Carrickfergus Enterprise Agency Ltd
Castleberg and District Enterprises Co Ltd
Castlereagh Enterprises Ltd
Cedar Foundation
Central Services Agency
Chadwyck-Healey Limited
Chartered Institute of Environmental Health, NI
Chartered Institute of Marketing
Chief Executive's Forum
Child Care Northern Ireland
Child Poverty Action Group
Childrens Law Centre
Chinese Chamber of Commerce
Chinese Welfare Association Ltd
Church of Ireland
Cinematograph Exhibitors' Association
City Councils
Civic Forum
Civil Service Occupational Health Service
Coalisland and District Development Association
Coalition on Sexual Orientation
Coleraine Enterprise Agency
Commissioner for Children and Young People
Committee on the Administration of Justice
Communication Workers' Union (CWU)
Community Dialogue
Community Relations Council
Community Relations Training Learning Consortium
Community Union
CONCORDIA
Confederation of British Industry
CONNECT
Construction Employers' Federation
Construction Industry Training Board
Cookstown Enterprise Centre Ltd
Coolkeeragh Power Limited
Co-Operation Ireland
Council for Catholic Maintained Schools
Counteract
Craigavon Industrial Development Organisation Ltd
Creggan Enterprises Ltd
Democratic Left
Democratic Unionist Party
Department of Culture, Arts and Leisure
Department for Employment and Learning
Department for Regional Development
Department of Agriculture and Rural Development
Department of Education
Department of Enterprise Trade and Investment
Department of Finance and Personnel

Department of Health, Social Services and Public Safety
Department for Social Development
Department of the Environment
Department of the Environment, Environment and Heritage Service
Derry Well Woman
Desmond and Sons Limited
Disability Action
District Councils
Down's Syndrome Association
Driver and Vehicle Testing Agency
Driver Training Services
Du Pont (UK) Limited
Dungannon Enterprise Centre Ltd
East Belfast Community Development Agency
East Belfast Enterprise Park Ltd
Eastern Group Environmental Health Committee
Eastern Health and Social Services Board
Economic Research Institute of Northern Ireland
Employers' Forum on Disability
Engineering Employers' Federation
Engineering Training Council
Engineers' and Managers' Association (EMA)
Enterprise Ulster
Equality Commission
Equality Forum Northern Ireland
Equipment Hire Association of Northern Ireland Ltd
Equity
Eurocentre West Ltd
Falls Community Council
Farget Enterprise Park Ltd
Federation of Petroleum Suppliers
Federation of Small Businesses
Federation of Small Businesses Recruitment
Federation of the Retail Licensed Trade (NI)
Fermanagh Enterprise Ltd
Fire Brigades Union
Forensic Science Agency of Northern Ireland
Fortress Pro-Tec Ltd
Forum for Community Network
Foyle Meats
Foyle Women's Information Network
FPA NI (formerly Family Planning Association)
Freight Transport Association
Gingerbread Northern Ireland
Glenwood Enterprises Ltd
GMB
Graphical Paper and Media Union
Gray & Adams (Ireland) Ltd
Greater Belfast Community Network
Greater East Belfast Partnership Board

Greater Shankill Partnership
Green Party
Handkerchief and Household Goods Association
Harland and Wolff Heavy Industries Limited
Head of the Northern Ireland Civil Service
Health and Safety Executive
Heating and Ventilating Contractors' Association
Help the Aged
Heron Brothers Ltd
Homefirst Community Health and Social Services Trust
INCORE Conflict Resolutions Ltd
Indian Community Centre
Institute of Acoustics
Institute of Directors
Institute of Directors (NI Division)
Institute of Professionals, Managers and Specialists (IPMS)
Invest NI
Irish Bank Officials Association
Irish National Teachers Organisation
James G McAlorum Ltd
John Mackle (Moy) Limited
Joint Industry Board for the Electrical Engineering Industry
Justice for Asbestos Victims
Keady Business Centre
Kesh Development Association Charitable Trust
Labour Party
Labour Relations Agency
Lagan Group
Larne Development Forum
Larne District Partnership Board
Larne Enterprise Development Co Ltd
Law Centre (NI)
Law Society of Northern Ireland
Lilliput Services
Lisburn Enterprise Organisation Ltd
Local Strategy Partnership
Loughrey College
Lurgan Council for Voluntary Action
Magherafelt Womens Group
Mallusk Enterprise Park
Maritime and Coastguard Agency
Mastic Asphalt Federation (NI)
Mr B McClintock
McGrigors, Solicitors
MENCAP
Methodist Church in Ireland
Ministry of Defence
Moyle Enterprise Co Ltd
MPs MEPs
Mr George Condell

Mr T Mills
Mr Richard Steele
Multi-Cultural Resource Centre
Musicians Union
National Association of Schoolmasters/Union of Women Teachers
National Association of Teachers in Further and Higher Education
National Energy Action Charity
National Union of Rail, Maritime and Transport Workers
Newry and Mourne Enterprise Agency
Newry and Mourne Senior Citizen's Consortium
Newry and Mourne Women
Newtownabbey Senior Citizen's Forum
NI-CO (Northern Ireland Public Sector Enterprises Ltd)
NIGEN
North Belfast Partnership Board
North City Business Centre Ltd
North Down Development Organisation Ltd
North Eastern Education and Library Board
North West Community Network
North West Forum of People with Disabilities
North West Industrial Health and Safety Group
Northern Group Systems
Northern Health and Social Services Board
Northern Ireland African Cultural Centre
Northern Ireland Agricultural Producers' Association
Northern Ireland Anti-Poverty Network
Northern Ireland Assembly Members
Northern Ireland Association for Mental Health
Northern Ireland Association for the Care and Resettlement of Offenders
Northern Ireland Association of Citizens Advice Bureaux
Northern Ireland Audit Office
Northern Ireland Authority for Energy Regulation
Northern Ireland Bakery Council
Northern Ireland Bankers' Association
Northern Ireland Centre for Competitiveness
Northern Ireland Chamber of Commerce & Industry
Northern Ireland Chamber of Trade
Northern Ireland Committee/Irish Congress of Trade Unions
Northern Ireland Conservative Association
Northern Ireland Council for Ethnic Minorities
Northern Ireland Council for Integrated Education
Northern Ireland Council for the Curriculum, Examinations and Assessment
Northern Ireland Council for Voluntary Action
Northern Ireland Court Service
Northern Ireland Dairy Association
Northern Ireland Electricity
Northern Ireland Economic Research Centre
Northern Ireland Fire and Rescue Service
Northern Ireland Gay Rights Association
Northern Ireland Hotels Federation

Northern Ireland Housing Executive
Northern Ireland Human Rights Commission
Northern Ireland Islamic Centre
Northern Ireland Master Plumbers' Association
Northern Ireland Occupational Health and Safety Group
Northern Ireland Office
Northern Ireland Oil Federation
Northern Ireland Partnership Board
Northern Ireland Plastics Association
Northern Ireland Prison Service
Northern Ireland Public Service Alliance (NIPSA)
Northern Ireland Quarry Owners' Association
Northern Ireland Railways
Northern Ireland Resident Magistrates' Association
Northern Ireland Spinners Limited
Northern Ireland Statistics and Research Agency (NISRA)
Northern Ireland Textiles and Apparel Association Ltd
Northern Ireland Timber Trades' Association
Northern Ireland Tourist Board
Northern Ireland Unionist Party
Northern Ireland Voluntary Trust
Northern Ireland Volunteer Development Agency
Northern Ireland Women's Aid Federation
Northern Ireland Women's European Platform
NSPCC, Northern Ireland Regional Office
NUS/USI, Northern Ireland Student Centre
NW Community Network
Occupational Health Service
Office of Industrial Tribunals
Office of the First Minister and Deputy First Minister
Omagh Enterprise Co Ltd
Omagh Women's Area Network
Organisation for the Unemployed Northern Ireland
Ormeau Enterprises Ltd
Pass International
PDA Consultant Engineers
Peter Scott Health and Safety
Petrol Retailers Association
Pharmaceutical Society of Northern Ireland
Phoenix Natural Gas
POBAL
Police Federation for Northern Ireland
Police Service of Northern Ireland
Premier Power Limited
Presbyterian Church in Ireland
Press for Change
PricewaterhouseCoopers
Prince's Trust
Progressive Unionist Party
Public Commerce Services Union (PCS)

Quarry Products Association NI
 Queen's University
 Relate
 Retail Motor Industry Federation
 Richards PLC
 Roads Service
 Roe Valley Enterprises Ltd
 Roman Catholic Church
 Roslea Enterprises Ltd
 Royal College of Midwives
 Royal College of Nursing of the UK (NI Board)
 Royal Group of Hospitals Trust
 Royal Institution of Chartered Surveyors in Northern Ireland
 Royal National Institute for Deaf People (NI)
 Royal National Institute for the Blind (NI)
 Rural Community Network
 Rural Development Council
 Rural Support
 Safety Advice Centre
 Save the Children
 SDLP
 Seagate Technology (Ireland)
 Sense NI
 Services Industrial Professional Technical Union
 Shorts Bombardier PLC
 Sikh Cultural Centre
 Sinn Fein
 Skyglaze Architectural Systems Ltd
 Social Economy Agency (NI)
 Social Security Agency
 Society of Occupational Medicine
 South Belfast Partnership Board
 South Eastern Education and Library Board
 South West Fermanagh Development Organisation Ltd
 Southern Education and Library Board
 Southern Group Environmental Health Committee
 Southern Health and Social Services Board
 Spence Bryson Limited
 SRT Donnelly and Co
 St John Ambulance NI
 Strabane Industrial Properties Ltd
 Staff Commission for Education and Library Boards
 Sypol Ltd
 Tennants Textile Colours Limited
 Tesco Stores Limited
 The British Chemical Distributors and Traders Association
 The British Library
 The Glass and Glazing Federation
 The Guide Dogs for the Blind Association
 The Institute of Quarrying

The Local Government Staff Commission for NI (LGSC)
The Northern Group
The Senior Citizens Consortium Sperrin Lakeland
The Workers' Party
The Women's Centre
Thermomax Limited
Townsend Enterprise Park Ltd
Trainfield Construction Ltd
Training for Women Network Ltd
Translink
Transport Salaried Staff Association
Transport Training Services Ltd
Transtec Automotive (Campsie) Limited
UK Unionist Party
Ulster Cancer Foundation
Ulster Community and Hospitals Trust
Ulster Farmers' Union
Ulster Furniture Federation
Ulster Scots Heritage Council
Ulster Teachers' Union
Ulster Unionist Party
Union of Construction, Allied Trades and Technicians
Union of Shop, Distributive and Allied Workers
UNISON
University of Ulster at Coleraine
Water Service
West Belfast Development Trust Ltd
West Belfast Economic Forum
West Belfast Partnership Board
Western Education and Library Board
Western Group Environmental Service
Western Health and Social Services Board
Westlink Enterprise Centre
Women's Forum Northern Ireland
Women's Information Group
Women's Resource and Development Agency
Women's Support Network
Women's Training, Enterprise and Childcare
Workspace
Youth Action Northern Ireland Gender Equality Unit
Youth Council for Northern Ireland