



Department of Trade and Industry

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

Proposal to Amend the Regulations

A Consultation Document

23 January 2001

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THE EQUIPMENT AND PROTECTIVE SYSTEMS INTENDED FOR USE IN POTENTIALLY EXPLOSIVE ATMOSPHERES REGULATIONS 1996

PROPOSAL TO AMEND THE REGULATIONS

A CONSULTATION DOCUMENT

Preface

The Department of Trade and Industry (DTI) would welcome your comments on consideration of a proposal to amend the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996 S.I. No. 192. ([Annex A](#))

The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996 ("the Principal Regulations"), implement Directive 94/9/EC, ("the Directive"), and came into force on 1st March 1996. The transition period lasts until 30th June 2003, after which, industry must apply the Principal Regulations which implement the Directive.

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.

An additional, secondary, issue has also been identified. Industry has been slow to seek the single market trading benefits of CE marking for ATEX category products and now there appears to be significant stockpiles of equipment which would not conform to the standards required under the Directive, especially in heavy industries such as, petrochemicals and oil and gas production. There may also be such stocks held by public sector bodies such as the NHS. Although these products will have been subject to national regulations at the time of production, it is anticipated that they may still be in the supply chain, having not been purchased by an end user, at the end of the Directive's transitional phase on 30th June 2003 and by that time will then become subject to its mandatory conformity assessment requirements. Unusually, suppliers and distributors rather than manufacturers, are likely to be the most affected by this problem, and may find themselves caught at the time of taking equipment into service. In particular, if their equipment requires assembly, modification, rebuilding, bespoke installation, or other modification or if it remains in the supply chain during the transitional period and is put into

service after the transitional period it will need to be brought into compliance with the requirements of the Principal Regulations.

By making the amendment at this time, those affected can take early account of possible effects and take action to minimise any significant additional costs after the Directive's mandatory application, from 1 July 2003. At the very least, they will be alerted to the need to evaluate the position for all their stocks, and meet all necessary requirements before use.

An additional function of this amendment is to take account of the recent corrigenda (L21/42,26/1/2000) to the Directive issued by the European Commission 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.

A partial Regulatory Impact Assessment has been prepared and is attached at Annex B.

The DTI would be grateful for any comments you may have. If possible please could they be channelled through any trade associations or employers bodies to which you may belong.

Comments are required by **23 April 2001**.

Co-ordinated responses should be sent to Peter Howick at the address below. If possible, an e-mail response would be preferred. Further hard copies of the consultation document or copies of the Directive or the Principal Regulations, can be obtained from the address below.

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Please note that replies will be treated as open, unless respondents state that they wish them, or any part of them (including the identity of the respondent), to be treated as confidential.

Department of Trade and Industry
London
January 2001

Summary of Proposals

THE DRAFT AMENDMENT TO THE PRINCIPAL REGULATIONS^(a) TO INCLUDE THE TAKING INTO SERVICE OF EQUIPMENT WITHIN THE SCOPE OF THE PRINCIPAL REGULATIONS AND TO AMEND THE PRINCIPAL REGULATIONS TO REFLECT THE EUROPEAN COMMISSION CORRIGENDA, (L21/42,26/1/2000) TO THE DIRECTIVE.

CITATION AND COMMENCEMENT

Regulation 1 identifies the Regulations as the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations, identifies the extent of the Regulations and establishes the date of entry into force.

INTERPRETATION

Regulation 2 provides interpretation and definitions necessary for the application of the subsequent Regulations

AMENDMENT OF THE PRINCIPAL REGULATIONS

Regulation 3 lists the textual changes to the regulations in and Schedules to the Principal Regulations.

(a) S.I. 192/1996.

Supplementary Notes

The following are considered to be particularly worthy of note, consideration or comment:

- 1) Regulation 3(2)(a)** - The definition of “responsible person” in the Principal Regulations is 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.
- 2) Regulation 3(b)** - amends 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.
- 3) Impact on Distributors/Users** - We would be interested to know of particular industry sectors which may be significantly affected by the amendment and in what way they will be affected.
- 4) Costings** - The costs we have put into the Regulatory Impact Assessment are based on very broad assumptions. Therefore we would be pleased to receive any comment on any significant additional costs that may be borne by manufacturers (especially small and medium sized enterprises), or those in the supply chain, who may be affected by these amendments.

DRAFT REGULATIONS

Citation, commencement and extent

1. These Regulations, which extend to Great Britain, may be cited as the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres (Amendment) Regulations [2001] and shall come into force on [].

Interpretation

2.-(1) In these Regulations -

- (a) the “ATEX Directive” means Directive 94/9/EC of the European Parliament and of the Council on the approximation of the laws of Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres **(a)**; and
- (b) the “principal Regulations” means the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996**(b)**.

Amendment of the principal Regulations

3.-(1) The principal Regulations shall have effect as amended by the following provisions of this regulation.

(2) In regulation 2 -

(a) in paragraph (2), in the definition of “responsible person” there shall be inserted the following words –

(i) after the first occurrence of the words “on the market” “and puts that equipment, protective system or device into service”; and

(ii) after the second occurrence of the words “on the market” “and puts it into service”;

(b) after paragraph (2), the following shall be added -

“(3) 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) OJ No. L100, 19.4.94 p.1, as amended by corrigendum, OJ No. L21/42, 26.1.2000.

(b) S.I. 1996/192, as amended by S.I. 1998/81.

(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 paragraph (2) of regulation 3 –

(a) in sub-paragraph (a), for the words “or the processing of material” there shall be substituted the words “and the processing of material, as the case may be,”; and

(b) in sub-paragraph (b), for the definition of “protective systems” there shall be substituted the following -

““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 5, paragraph (1), there shall be inserted the words “and put into service” after the first occurrence of the words “placed on the market”.

(5) In regulation 6, paragraph (1), there shall be inserted the words “and put into service” after the words “place on the market”.

(6) In regulation 8, sub-paragraph (b) of paragraph (2) there shall be substituted the words “written attestation” for the word “certificate”.

(7) In regulation 9 there shall be substituted the words “or device shall not be regarded as being placed on the market and put into service”, for the first occurrence of the word “device”.

(8) In regulation 14, sub-paragraph (b) of paragraph (1), there shall be substituted the words “written attestation” for the word “certificate”.

(9) In Schedule 2 -

(a) in section 5, there shall be substituted the words “equipment, protective systems and devices” for the word “equipment and protective systems”; and

- (b) in section 9, there shall be substituted the words “equipment, protective systems or devices” for both occurrences of the words “equipment or protective systems”.
- (10) In Schedule 3(a)–
- (a) in point 1.1.3, there shall be substituted the word “mechanical” for the word “impact”;
 - (b) in point 1.2.3, there shall be substituted -
 - (i) the words “releases of ” for the word “developing” in the second paragraph of that point; and
 - (ii) the word “releases” for the word “escapes” in the third paragraph of that point;
 - (c) in point 1.2.7, paragraph (d), there shall be substituted the word “do” for the word “shall”;
 - (d) in point 1.5.1, there shall be –
 - (i) inserted the words “or both measurement and control devices” after the words “measurement or control devices” in the first paragraph of that point; and
 - (ii) substituted of the word “The” for the words “For electrical circuits the” in the third paragraph of that point;
 - (e) in point 2.1.1, there shall be substituted the word “mists” for the word “hazes”; and
 - (f) in point 3.0.2, there shall be substituted the word “positioned” for the word “positional”.
- (11) In Schedule 4(b), section 2, in the second sub-paragraph of paragraph (b), there shall be inserted the word “occasionally” after the word “occur”.
- (12) In Schedule 6(c), in the second paragraph of section 5, there shall be substituted the word “significant” for the word “relevant”.
- (13) In Schedule 7(d), in the second indent of section 4.2, there shall be substituted the word “test” for the word “text”.

(a) Annex II of the ATEX Directive.
 (b) Annex I of the ATEX Directive.
 (c) Annex III of the ATEX Directive.
 (d) Annex IV of the ATEX Directive.

- (14) In Schedule 8 **(a)**, section 4.1 there shall be substituted the word “equivalent” for the word “equipment” the last time the word “equipment” occurs in that section.
- (15) In Schedule 9 **(b)** -
- (a) in section 1, there shall be substituted -
 - (i) the word “satisfies” for the word “satisfy”, and
 - (ii) the word “it” for the word “them”; and
 - (b) in section 2, the words “or protective systems” shall be omitted.
- (16) In Schedule 10 **(c)**, section 3 -
- (a) in point 3.1 the words “and protective systems” shall be omitted; and
 - (b) in point 3.2, there shall be substituted the word “instructions” for the word “instruments”.
- (17) In Schedule 11 **(d)**, in section 1, there shall be substituted the word “satisfies” for the word “satisfy”.

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- (a)** Annex V of the ATEX Directive.
 - (b)** Annex VI of the ATEX Directive.
 - (c)** Annex VII of the ATEX Directive.
 - (d)** Annex VIII of the ATEX Directive.

PARTIAL REGULATORY IMPACT ASSESSMENT FOR THE PROPOSED AMENDMENT TO THE EQUIPMENT AND PROTECTIVE SYSTEMS INTENDED FOR THE USE IN POTENTIALLY EXPLOSIVE ATMOSPHERES REGULATIONS 1996. (“ATEX”)

Purpose and intended effect

1. To include the “taking into service” of equipment, protective systems or devices (hereinafter referred to as “equipment”) subject to the ATEX Directive, 94/9/EC (“the Directive”) in the scope of the UK’s implementing Regulations, whether placed on the market or not.
2. To incorporate the Corrigenda to the Directive published in the Official Journal of the European Communities in L21/42 published 26th January 2000. This Corrigenda was issued by the European Commission following the identification of linguistic divergences between the different language versions of the Directive.

Issues of Equity and Fairness

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, although identifiable, is very small. The proposed amendment would ensure that the activity of taking into service is covered.
4. The proposed amendment may also have a secondary effect on another group. There is likely to be a category of distributors/users who hold equipment which has been “placed on the market” (ie sold) but is then held in stock for a long period of time and may not be “taken into service” (ie first used) until 1st July 2003 or after when the transitional period ends and application of the Regulations becomes mandatory. The bulk of such equipment, which has already been purchased by an end user and is therefore out of the supply chain would not be affected. However at the time of taking into service, certain equipment may become subject to the Regulations’ conformity assessment requirements. This would generally apply to equipment that can only be used after an assembly operation, installation or other manipulation to that equipment has taken place or where equipment remains in the supply chain during the transitional period and is put into service after the transitional period. The sectors most likely to hold

substantial stock for long periods, mainly for emergency use, are offshore oil operations, petrochemical plants and, possibly, large, publicly owned organisations, such as the NHS.

5. Small and medium enterprises (SMEs) are not liable to be much affected because, unlike large distributors and users, they are unlikely to hold much (expensive) unused stock.

Options

6.
 - a. Amend the Regulations as proposed now.
 - b. Amend the Regulations as proposed but later.
 - c. Do not amend the Regulations

Risk assessment of each option

7. Since the purpose of the principal Regulations is to remove technical barriers whilst maintaining safety, the following risk assessment deals only with the potential for infraction proceedings under each of the above options.

- a. No risk of infraction proceedings
- b. Very slight risk that the Commission will start infraction proceedings but a low risk that they will be successful. However, no matter when the Regulations are amended, they will only come into mandatory effect on 1st July 2003.
- c. High risk that the Commission will start infraction proceedings with a high risk that they will be successful. There is no doubt that the UK should make this amendment in order to bring the Regulations up to the level of the Directive. On this basis, following any notice from the Commission of infraction proceedings we would almost certainly make the amendment as a matter of urgency. This would prevent the matter being taken further. It is, by far, better to make the move now on our own responsibility and in an ordered way.

There is also a small risk that those users disadvantaged by the present situation because they purchase their equipment rather than build or import their own equipment will take action against the UK Government.

Benefits of immediate implementation

8. If option (a) is accepted then those involved will be given maximum notice in order to adjust before 1st July 2003. The playing field will

have also been levelled in that no group will be disadvantaged by the implementation of the Directive in the UK. In addition, manufacturers building for own use and for sale to others will only have to deal with one set of harmonised procedures rather than an EU set and a UK set.

Costs

9. The effect of including the “taking into service” provision will have limited but complex consequences for different players in the affected sectors. Respondents views are welcome as to the likely costs of these proposals.

Manufacturers selling product to others

10. No change.

Manufacturers building equipment for own use

11. The numbers of relevant self-made products may amount to no more than a hundred items per annum. Of these, maybe a third will require third party assessment and the likely direct cost would be; 33 x £10,000 assessment cost per product, so the additional total cost to industry would be £330,000 p.a.

Distributors

12. Potentially, there could be significant problems for them, in particular, with slow moving lines of stock such as flame proof boxes, junction boxes and light fittings, which may have to be scrapped as non-compliant if not put into use on or before 30th June 2003. Although electrical distributors could be expected to be aware of the ATEX requirements, the non-electrical industry distributors (to whom this Directive is relatively new) will be less aware.

Users

13. 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 NHS.

Business sectors affected

14. Mainly large scale and heavy industries such as; mining operations, offshore oil and gas exploration, petrochemicals, pharmaceuticals and other processing industries and plants where a build-up of vapours, mists, gasses or dusts can create potentially explosive atmospheres
15. 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. It is estimated that there are some 12,400 UK businesses operating within these sectors.¹ 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.

The Corrigenda

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

Impact on small businesses

17. Although it is estimated that some 90% of the 12,400 businesses in these sectors employ less than 50 persons, this amendment is unlikely to have any direct effect on them. 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.

Securing Compliance

18. The Health & Safety Executive (HSE) are responsible for the enforcement of the Regulations at present and will continue with this responsibility following the amendment. HSE have regular contact with manufacturers, distributors and users in this field. Industry will be informed of these changes during consultation and afterwards and by amendment to the DTI Guidance as well as to the Standards & Technical Regulations Directorate (STRD) WebPages dealing with ATEX.

¹ Source: *Small and Medium Enterprise Statistics for the UK, 1999, DTI*

Consultation

19. Wide ranging informal consultations have already been held with manufacturer groups, specific manufacturers and users and with Notified Bodies providing third party certification under the Directive. Although the issue was raised initially by a Notified Body, manufacturers and users consulted were unaware of the omission. Manufacturers in particular consider that the impact in terms of manufacturing for own use would be very limited given the nature of the industry and the potential risks involved. 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.

Recommendation

20. This is a necessary amendment. It is recommended that option (a) [amend the Regulations now] be accepted. A small but identifiable group is likely to be affected and should therefore be given the opportunity to comment but also given the maximum time to adjust before 1st July 2003. At this stage, we do not know if those affected will see this amendment as a problem. It may be that despite the wording of the Regulations, many are already working to the letter of the Directive and applying it across the board. It is also not clear if moving from existing national certification to certification as required by national Regulations which implement EU certification standards and procedures will be seen as a burden. The two processes are similar with similar safety aims.

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