

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT EQUIPMENT AND PROTECTIVE SYSTEMS
INTENDED FOR USE IN POTENTIALLY
EXPLOSIVE ATMOSPHERES REGULATIONS
(NORTHERN IRELAND) 2017
(AMENDMENT) (NORTHERN IRELAND)
REGULATIONS 2023

Wednesday 12 July 2023

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The Committee consisted of the following Members:

Chair: MARTIN VICKERS

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| † Cadbury, Ruth (<i>Brentford and Isleworth</i>) (Lab) | † Morton, Wendy (<i>Aldridge-Brownhills</i>) (Con) |
| † Cruddas, Jon (<i>Dagenham and Rainham</i>) (Lab) | Osborne, Kate (<i>Jarrow</i>) (Lab) |
| † Green, Chris (<i>Bolton West</i>) (Con) | † Saxby, Selaine (<i>North Devon</i>) (Con) |
| Gullis, Jonathan (<i>Stoke-on-Trent North</i>) (Con) | † Stafford, Alexander (<i>Rother Valley</i>) (Con) |
| † Hayes, Sir John (<i>South Holland and The Deepings</i>) (Con) | † Tolhurst, Kelly (<i>Rochester and Strood</i>) (Con) |
| † Hollinrake, Kevin (<i>Parliamentary Under-Secretary of State for Business and Trade</i>) | † Wakeford, Christian (<i>Bury South</i>) (Lab) |
| † Leadbeater, Kim (<i>Batley and Spen</i>) (Lab) | † Wood, Mike (<i>Dudley South</i>) (Con) |
| † Mahmood, Mr Khalid (<i>Birmingham, Perry Barr</i>) (Lab) | † Yasin, Mohammad (<i>Bedford</i>) (Lab) |
| † Maynard, Paul (<i>Blackpool North and Cleveleys</i>) (Con) | Bethan Harding, <i>Committee Clerk</i> |
| | † attended the Committee |

Sixth Delegated Legislation Committee

Wednesday 12 July 2023

[MARTIN VICKERS *in the Chair*]

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

2.30 pm

The Parliamentary Under-Secretary of State for Business and Trade (Kevin Hollinrake): I beg to move,

That the Committee has considered the draft Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023.

It is a pleasure to serve under your chairmanship, Mr Vickers. The purpose of this statutory instrument is to ensure that the Windsor framework, in respect of European Union directive 2014/34/EU, known as the ATEX directive, is properly implemented in Northern Ireland, and to introduce provisions regarding UK(NI) marking.

The ATEX directive aims to prevent equipment or protective systems from becoming sources of ignition in atmospheres that could be explosive if conditions lead to dangerous levels of flammable gases, mist or dust. Settings where these conditions could arise include petrol stations and a range of mainly industrial locations, such as mines, agricultural silos and chemical processing plants. ATEX-compliant handheld radios would, for example, be mandatory for safe communication in environments with potentially explosive atmospheres, where a spark could react with the air to cause an explosion.

There are separate GB and Northern Ireland regulations covering ATEX requirements. The Northern Ireland ATEX regulations—the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017—were made by the Department for the Economy in Northern Ireland, with the Health and Safety Executive for Northern Ireland enforcing them. Currently the Northern Ireland ATEX regulations refer only to the EU market, which no longer includes Northern Ireland.

Conformity assessment bodies perform the vital role of assessing whether specified requirements relating to a product, process, system, person or body are fulfilled, carrying out calibration, testing, certification and inspection activities. For the ATEX directive, as for other directives, there is a system of mutual recognition of conformity assessment bodies, meaning that a given EU country recognises the results from a conformity assessment body located in another EU country.

This system of mutual recognition does not apply to UK conformity assessment bodies, which are now outside the EU. To address that, relying on a derogation in the

framework, the UK previously legislated for a new UK(NI) marking to be applied in addition to the CE marking, where goods requiring mandatory third-party conformity assessment have been tested against EU requirements by a UK body. The UK(NI) marking applies when placing such products on the Northern Ireland market.

This instrument makes the necessary amendments to ensure that the Northern Ireland ATEX regulations reflect the fact that the UK has left the European Union. For example, it ensures that references to member states are replaced with an appropriate term that includes Northern Ireland—but not GB—and the European economic area states. It also ensures that information obligations on the UK to inform the Commission and member states apply only to information in respect of Northern Ireland and not the rest of the UK.

The instrument introduces new provisions on the UK(NI) marking into the Northern Ireland ATEX regulations. In line with the Windsor framework, a manufacturer that wants to supply an ATEX product for the Northern Ireland market will need to manufacture that product to EU requirements. If that product requires third-party conformity assessment under the relevant EU legislation, and if a UK conformity assessment body is used to do that, the manufacturer will be legally required to apply the UK(NI) indication, which must accompany the CE or other relevant conformity marking. Failure to comply with this new requirement will be a criminal offence in Northern Ireland. The Northern Ireland Department of Justice has confirmed that the new offence of failure to comply is consistent and proportionate and will not have a detrimental impact on the criminal justice system in Northern Ireland.

As a result of the additional UK(NI) marking requirements, some businesses may incur costs associated with familiarisation with the new requirements and the labelling itself. However, the impacts of these changes are expected to be very limited.

My officials in the Office for Product Safety and Standards will be providing online industry guidance to coincide with this instrument coming into force, to ensure that businesses have all the information they need on how to comply with the new requirements. They are also liaising with the Health and Safety Executive for Northern Ireland, which is responsible for enforcing the Northern Ireland ATEX regulations and ensuring that it has all the necessary information to do so.

In summary, this instrument is needed to ensure that the Windsor framework, with respect to the ATEX directive, is properly implemented in Northern Ireland. It does that by amending the Northern Ireland ATEX regulations to reflect the fact that the UK has left the EU and by introducing provisions on UK(NI) marking. I urge the Committee to approve this SI.

2.36 pm

Ruth Cadbury (Brentford and Isleworth) (Lab): It is a pleasure to serve under you, Mr Vickers, and to speak for the official Opposition in this Delegated Legislation Committee debate on the draft Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023.

I thank the Minister for his speech and for the detail in which he set out this largely technical change, which relates to Northern Ireland. Having listened to his speech and looked at the debate that took place in the other place, I would like to ask him a few questions.

However, I would like to start by reaffirming the Opposition's support for the Windsor agreement. We welcomed it when it was signed, and we know that it was welcomed by businesses, civic leaders and our international allies. I am proud of the work the Labour party has done over the past 25 years to bring peace to Northern Ireland and of the small role played over a longer period by the Barrow Cadbury Trust, which I chaired, to build and support dialogue across the community divide in Ireland. That was the precursor to peace in Northern Ireland.

The change before us will require some UK businesses to add an additional UK(NI) marker to products that could be used in businesses with certain safety risks, such as petrol stations and fertiliser producers. Although it applies only to Northern Ireland, it will impact businesses based in Britain that export these products to Northern Ireland.

I note that the Government did not run an impact assessment of this change, and nor did they conduct a consultation. I understand from comments made by Lord Johnson in the other place that there is no impact assessment because this change fell under the Windsor agreement and because it is "limited". However, the Government have said that they have had discussions with 4,000 businesses about the impact of this change. That number suggests quite a wide scope.

That brings me to my second point. The Department estimates that around 5,500 businesses—I think that that figure is right—are impacted by the ATEX regulations. In the words of Lord Johnson,

"some businesses may incur costs associated with...the new requirements and the labelling"

under this SI. The Government state that the estimated cost to businesses is around £2.5 million. If they did not carry out an impact assessment or a formal consultation, how did they reach that cost figure? Is it an annual cost, a recurring cost or a one-off cost? Do the Government know the breakdown by nation or region? Do they know whether very small microbusinesses or small and medium-sized enterprises will be hit by this cost, and, if so, roughly how many?

I ask those questions to ensure that the Government have considered and understood in full the impact on businesses, and that businesses are supported through this change. Now, the Minister may well offer the immortal words that he will write to me with answers to these questions, but they are important, and they should be addressed, preferably today. I know that the Government will be taking steps to inform businesses about the regulations and the changes, through webinars and so on, but I hope they will ensure that businesses of all sizes get the information they need when they need it.

As the Minister said, these are largely technical changes relating to our change in EU membership and the new Windsor framework. I look forward to the Minister's response, and I hope he can address some of these issues in the time I have given him.

The Chair: I can see no one indicating they want to speak, so I call the Minister to respond.

2.40 pm

Kevin Hollinrake: I am grateful to the shadow Minister for her important points, and I thank the Committee for its consideration.

On the costs to businesses, the majority of businesses likely to be impacted are SMEs, with micro and small totalling 91% and medium being 8%. Prior UK CA changes were applicable to all businesses, so no business is likely to be impacted more than another.

On the impact assessment, according to the OPSS business population estimates in 2022, 5,445 businesses in the UK were subject to ATEX regulations. As that is an estimate, we provide a 10% upper and lower band, resulting in a high estimate of 5,900 businesses and a low estimate of 4,900. Firms would incur a familiarisation cost in the first year they were made aware of the changes. The cost is around £13,000.

On the points the hon. Lady raised about consultation, where there have been previous, similar instruments in this area, informal consultation did take place with a good cross-section of stakeholders, including trade associations and other industry representative bodies across the product areas covered by the instrument. Stakeholders were supportive of the need to maintain a functioning product safety and metrology regime on EU exit that mirrored the framework in operation the day before EU exit as closely as possible. As the hon. Lady rightly pointed out, an impact assessment has not been prepared for this SI, because measures resulting from the Windsor framework are out of scope of assessment.

To conclude, it is vital for the reasons I am about to summarise that this instrument comes into force in Northern Ireland. It is needed to properly implement the Windsor framework with respect to ATEX products. It achieves its main purpose by amending the Northern Ireland ATEX regulations to reflect the fact that the UK is no longer part of the EU and by introducing provisions on the UK(NI) marking, which will enable UK conformity assessment bodies to assess ATEX products for the Northern Ireland market and ensure conformity. The impact of the changes is likely to be very low for businesses and to be associated with familiarisation with the new UK(NI) marking requirements and the labelling itself. I am happy to commend this instrument to the Committee.

Question put and agreed to.

2.43 pm

Committee rose.

