EXPLANATORY MEMORANDUM TO

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

2023 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The main purpose of this instrument is to ensure that the Windsor Framework, in respect of European Union (EU) Directive 2014/34/EU (known as the 'ATEX Directive'), is implemented in Northern Ireland (NI), including provisions with regard to the UK(NI) marking. It does this by amending 'The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017' (ATEX NI).

2.2 The instrument also makes the Secretary of State (SoS) responsible for certain functions that are currently the responsibility of the Health and Safety Executive Northern Ireland (HSENI). This aligns ATEX NI with the other product legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

5.1 The Minister Kevin Hollinrake MP has made the following statement regarding Human Rights:

"In my view the provisions of the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 (Amendment) (Northern Ireland) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 Annex 2 to the Windsor Framework lists EU legislation that must continue to be implemented in NI. The ATEX Directive is listed in Annex 2.

6.2 The purpose of ATEX NI is to ensure that the equipment and systems it covers are safe before they are sold or supplied in the NI market.

6.3 Certain ATEX NI provisions no longer work as intended since the UK has left the EU. This SI makes the necessary amendments to ensure that ATEX NI reflects the fact that the UK has left the EU for example, by ensuring that references to "Member States" are replaced with an appropriate term that includes NI only, and the EEA states, and by ensuring that information obligations on the UK to inform the Commission and Member States only apply to information in respect of NI (and not the rest of the UK).

6.4 ATEX NI follows the same framework of many other pieces of product safety legislation, which have already been amended in the same way as this current instrument amends ATEX NI. This framework includes a process of conformity assessment by third party conformity assessment bodies, known as "notified bodies". Since the UK left the EU, UK notified bodies are no longer recognised for the purpose of the EU market. However, under the Windsor Framework, UK notified bodies can conformity assess for the NI market but if they do so the manufacturer must affix the UK(NI) marking. This instrument introduces the provisions for the UK(NI) marking, including sanctions for non or improper use.

7. Policy background

What is being done and why?

7.1 The Windsor Framework requires that the EU legislation listed in its Annex 2 be implemented in Northern Ireland.

7.2 One of the Directives listed in Annex 2 is the ATEX Directive. The purpose of this instrument is therefore to assist in ensuring the UK meets its international obligations under the Windsor Framework by allowing for proper implementation of the ATEX Directive in Northern Ireland.

7.3 The instrument amends ATEX NI to ensure that, for example, the market to which ATEX NI applies is the market of NI and the EEA states. It also makes amendments to ensure that UK notified bodies can continue to be used in respect of the NI market and, in line with the Windsor Framework, makes clear that when they are so used, the manufacturer must affix the UK(NI) marking to the product.

7.4 It also makes other amendments to ensure that ATEX NI is consistent with the other product safety legislation. For example, currently it is HSENI that notifies notified bodies to the Commission and EU member States. Similarly, HSENI is responsible for informing the Commission and other member States, as required under the ATEX Directive, where there are non-conformity products that may be on the EU market. This function is more appropriately done by the Secretary of State and so the Instrument makes the necessary changes.

Explanations

What did any law do before the changes to be made by this instrument?

7.5 The purpose of ATEX NI is to ensure that ATEX products are safe, compliant and accurate to use and do not cause harm to people (in particular workers), domestic animals or property. ATEX NI also provides that products identified as unsafe or non-compliant can be removed from the market. Before the changes to be made, ATEX NI did not take account of the fact that the UK is no longer part of the EU.

Why is it being changed?

7.6 ATEX NI is being changed to take account of the Withdrawal Agreement and to implement the Windsor Framework. For example, by ensuring that references to "Member States" are replaced with an appropriate term that includes NI only, and the EEA states, and by ensuring that information obligations on the UK to inform the Commission and Member States only apply to information in respect of NI (and not the rest of the UK). Changes are also being made to ensure that UK notified bodies can continue to be used in respect of the NI market using UK(NI) marking.

What will it now do?

7.7 The instrument will implement changes to ATEX NI to take account of the Withdrawal Agreement and implement the Windsor Framework. This will enable ATEX NI to fulfil its purpose of proper implementation of the ATEX Directive in Northern Ireland, thus assisting in ensuring that the UK meets its international obligations under the Windsor Framework.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is made using powers under section 8C of the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 No consolidation is needed.

10. Consultation outcome

10.1 The Government did not undertake a public consultation given that this Instrument's provisions are limited to making amendments for the implementation of a Windsor Framework obligation and ensuring that Northern Ireland continues to implement EU derived product safety requirements for these manufactured goods.

10.2 The Department has undertaken engagement with a cross-representation of stakeholders, including other government departments and the Northern Ireland Office.

11. Guidance

11.1 Guidance will be provided to coincide with this instrument coming into force.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because measures resulting from the Framework are out of scope of assessment. The Framework has already been given effect in legislation through the European Union (Withdrawal Agreement) Act 2020, which adds provisions and powers to the European Union (Withdrawal) Act 2018.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the regulatory burdens on small businesses because there is no significant impact on business.

13.3 An Impact Assessment has not been prepared for this instrument because measures resulting from the Framework are out of scope of assessment. The Framework has already been given effect in legislation through the European Union (Withdrawal Agreement) Act 2020, which adds provisions and powers to the European Union (Withdrawal) Act 2018.

14. Monitoring & review

14.1 The Department does not intend to monitor this instrument.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Rebecca Upson at the Department for Business and Trade. Telephone: 07542 322 526 or email: Rebecca.upson@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Tony Thomas, Deputy Director for Product Safety Policy at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kevin Hollinrake MP Minister for Enterprise, Markets and Small Business at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.