

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND NORTHERN IRELAND PROTOCOL

Unnumbered Document

**COMMISSION IMPLEMENTING DECISION (EU) 2021/845 of 26 May 2021
amending Implementing Decision (EU) 2019/1202 as regards determination of
the spontaneous ignition behaviour of dust accumulations.**

Submitted by the Department for Business, Energy & Industrial Strategy on 01 July 2021

SUBJECT MATTER

1. This Decision revises a harmonised standard implementing Decision in support of Directive 2014/34/EU of the European Parliament and of the Council relating to the design and testing of equipment for use in potentially explosive atmospheres. It replaces standard EN 15188:2007 with standard EN 15188:2020 on the determination of the spontaneous ignition behaviour of dust accumulations.
2. The Decision sets out that the standard has been assessed by the Commission to ensure it meets the standardisation request and adequately addresses the legal requirements it aims to cover. The change to the reference to the new standard is applicable in NI under the terms of the Northern Ireland Protocol. Under the Government's commitments to Northern Ireland's unfettered access to the rest of the UK market, products covered by this change that meet the technical requirements to be placed on the market in Northern Ireland will be able to be placed on the GB market.
3. The UK, via the BSI, has adopted this standard as a national standard. As this standard replaces a previously designated standard (that if followed provides a presumption of conformity with safety requirements in GB) BEIS will, in due course, consider whether this revised standard should replace the existing designated standard. This decision is not needed before November 2022 in order to avoid any potential differences between the GB regime and the NI regime, which is the date on which the new standard will replace the current standard

Context

4. The safety of equipment used in explosive atmospheres is regulated in Great Britain by the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 2016 and in Northern Ireland by the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017. The legislation sets out the essential health and safety requirements (the legal requirements) with which a product must comply in order to be placed legally on the market. Many businesses use voluntary standards (national, European or international) as part of their process of demonstrating their products are safe and compliant with these essential requirements.
5. Harmonised standards published in the Official Journal of the EU have a specific status in relation to products placed on the EU and NI markets. Harmonised standards provide a rebuttable presumption of conformity to EU essential (health and safety) requirements of the legislation covered by that standard. They are a means to assist manufacturers to demonstrate that their products are safe and compliant with relevant requirements before placing them on the EU market. Following a harmonised standard is voluntary, and businesses can use alternative means to demonstrate that their product is safe and meets the essential requirements of the law.

Updates to the Standard

6. The detail of the changes is highly technical and uncontroversial. Key points from the standard are included below.
7. The standard specifies analysis and evaluation procedures for determining self-ignition temperatures of combustible dusts or granular materials as a function of volume by hot storage experiments in ovens of constant temperature. The test method is to determine the critical ignition temperature of different sizes of small dust accumulations and the standard provides methods to predict the critical ignition temperature of larger accumulations from that data.
8. The most significant difference to users is the change of internal oven design. The previous version of the standard used a separate chamber within an oven. The revised version uses a mesh cage within the oven which surrounds the sample. This improves the consistency between fan assisted and natural convection ovens. There is detail on the specification of the mesh and the distance from the oven walls for the mesh and the oven air temperature thermocouples.

9. The sizes of baskets recommended was changed (increasing the size of the smallest basket), and a method added to accurately determine the actual size of the baskets rather than accepting a nominal volume.
10. The maximum temperature difference between ignition and non-ignition oven temperatures is reduced for all cases and not just for extrapolation of data to different sizes and temperature ranges.
11. There is an addition of a section for calculating the reproducibility of extrapolated data at different volumes. This is based on the results from interlaboratory testing.
12. The annex of the revised standard gives more detail on methods for extrapolating data from the test volumes and temperatures to predict critical ignition temperatures at larger volumes.
13. Finally, there is an additional alternative method detailed for running tests which could be used for extrapolating to larger volumes based on fewer test samples.

UK involvement in the update of the standard

14. European Standards are adopted by the three European Standards Organisations: CEN (European Committee for Standardisation), CENELEC (European Committee for Electrotechnical Standardisation and ETSI who focus on telecommunication. CEN and CENELEC consist of 34 national members each, centred on Europe. The 34 member bodies are required to adopt all European Standards as National Standards without alteration to the key technical aspects. This standard has been adopted by the British Standards Institution (BSI) as BSEN15188: 2020.
15. BSI maintain numerous National Technical Committees who oversee and vote on the various development stages of the draft standard and their views feed into the wider European, and International, Standards making process. The BSI committees include representatives of key stakeholders and regulators who can represent the interests of the intended users of the standard throughout the process.
16. This revised standard was written by a working group that had representation and active participation from the UK. Since the earlier version of the standard was published, there have been two rounds of formal interlaboratory testing to improve the methods in the standard.

SCRUTINY HISTORY

17. There has been no previous Parliamentary scrutiny of this Decision.

MINISTERIAL RESPONSIBILITY

18. The Secretary of State for the Department for Business, Energy and Industrial Strategy has responsibility for product safety policy. The Secretary of State is also responsible for making decisions on which standards should be designated and give a presumption of conformity with relevant essential health and safety requirements in relation to Great Britain.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

19. Product safety in this area is a reserved matter for Scotland, Wales, and the subject matter of the Regulations is also a reserved matter for Northern Ireland. The devolved administrations have been consulted on this Explanatory Memorandum.
20. The change in the harmonised standard is only relevant to products made available on the EU and NI markets as it will be recognised as providing a presumption of conformity against EU requirements. Use of the standard is voluntary in any case, and does not alter the requirement to comply with essential safety requirements included in the law.

LEGAL AND PROCEDURAL ISSUES

21. The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations (Northern Ireland) 2017 implement European Union Directive (2014/34/EU) and provide a framework for the assessment of the suitability of equipment, protective systems, safety devices and components intended for use with such equipment which will be operated in an atmosphere that has the potential to present a risk of explosion.
22. The essential health and safety requirements are specified in Schedule 1 of the Regulations. Manufacturers have a duty to ensure that their products are designed and manufactured in accordance with these essential health and safety requirements.
23. The publication of this decision in the Official Journal by the European Commission is the formal notification that the standard is considered to provide a presumption of conformity with those essential requirements covered by the standard. The implementing decision itself does not amend the technical requirements of either the Directive or the Regulation, but it varies the list of voluntary standards that a manufacturer may apply to achieve a presumption of conformity with the existing essential health and safety requirements.

24. As the UK has already adopted this Standard there are no legal or procedural issues that will impact on interaction between the GB and NI markets.

POLICY IMPLICATIONS

25. The UK has replaced harmonised standards with designated standards, which are standards designated by the relevant Secretary of State by publishing a reference to them and which provide a presumption of conformity with relevant GB requirements.

26. The revisions to the harmonised standards list will not automatically change the UK's designated standards list. Updated versions of standards are assessed by relevant Government Departments against the essential safety requirements, and where appropriate, the list of designated standards is amended.

27. The revised standard takes effect in Northern Ireland on publication of the Decision (26th May 2021) and will be relevant for products placed on the market in NI. The Decision also sets out that, to allow business time to adapt their products to the new standards, references to the previous version of this standard will not be withdrawn until 27 November 2022. Therefore, until next year both versions of the standard can be used to provide a presumption of conformity in NI until that date.

28. While the standard has been adopted in the UK by BSI, it is yet to be considered for designation by the BEIS Secretary of State. It will be considered in due course and almost certainly before references relating to the original standard are withdrawn by the EU. Any decision on designating this standard will be based on what is in the best interests of the UK internal market. It will be considered in due course and almost certainly before references relating to the original standard are withdrawn by the EU. Any decision on designating this standard will be based on what is in the best interests of the UK internal market.

29. In the short term, there will be no practical or policy divergence between the approach taken in NI or GB as either the old or new standard is applicable in NI until November 2022. In the slightly longer term, should the BEIS Secretary of State be assured that the new standard meets the GB essential safety requirements it covers it will be designated meaning that there will be no policy or practical difference between the approaches in GB and NI in this area.

CONSULTATION

30. As part of the process of developing this standard, a public consultation was held between 25/4/2019 to 18/6/2019.

MINISTERIAL NAME AND SIGNATURE

Paul Scully



Parliamentary Under Secretary of State

Department for Business, Energy and Industrial Strategy