

STATUTORY INSTRUMENTS

**1978 No. 1039**

**Health and Safety at Work (Northern Ireland) Order 1978**

**<sup>F1</sup> PART II**

**HEALTH, SAFETY AND WELFARE IN CONNECTION WITH  
WORK, AND CONTROL OF DANGEROUS SUBSTANCES**

**F1** mod. by SR 2001/295

**Modifications etc. (not altering text)**

**C1** Pt. II restricted (15.11.2010) by [Fire and Rescue Services \(Northern Ireland\) Order 2006 \(S.I. 2006/1254 \(N.I. 9\)\)](#), arts. 1(3), **47** (with arts. 44, 46, 47(2), 49, 62); S.R. 2010/328, **art. 2**

*Preliminary*

**Preliminary**

**3** <sup>F2</sup>.—<sup>F3</sup>(1) The provisions of this Part shall have effect with a view to—

- (a) securing the health, safety and welfare of persons at work;
- (b) protecting persons other than persons at work against risks to health or safety arising out of or in connection with the activities of persons at work;
- (c) controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances, and generally preventing the unlawful acquisition, possession and use of such substances.

(2) The provisions of this Part relating to the making of health and safety regulations and the preparation and approval of codes of practice shall in particular have effect with a view to enabling the existing statutory provisions to be progressively replaced by a system of regulations and approved codes of practice operating in combination with the other provisions of this Part and designed to maintain or improve the standards of health, safety and welfare established by or under the existing statutory provisions.

(3) For the purposes of this Part risks arising out of or in connection with the activities of persons at work shall be treated as including risks attributable to the manner of conducting an undertaking, the plant or substances used for the purposes of an undertaking and the condition of premises so used or any part of them.

(4) References in this Part to the general purposes of this Part are references to the purposes mentioned in paragraph (1).

(5) <sup>F4</sup>.....

**F2** mod. by SR 2000/87; 2000/120

**F3** mod. by [2002 c. 8 \(NI\)](#)

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Safety at Work (Northern Ireland) Order 1978, PART II. (See end of Document for details)*

**F4** Art. 3(5) omitted (12.4.2010) by virtue of Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 10, **Sch. 12 para. 3(2)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

### *General duties*

#### **General duties of employers to their employees**

**4**<sup>F5</sup>.—<sup>F6F7F8</sup>(1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

(2) Without prejudice to the generality of an employer's duty under paragraph (1), the matters to which that duty extends include in particular—

- (a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;
- (b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;
- (d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;
- (e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

(3) Except in such cases as may be prescribed, it shall be the duty of every employer to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all of his employees.

(4) Regulations may provide for the appointment in prescribed cases by recognised trade unions (within the meaning of the regulations) of safety representatives from amongst the employees, and those representatives shall represent the employees in consultations with the employers under paragraph (5) and shall have such other functions as may be prescribed.

(5) It shall be the duty of every employer to consult any such representatives with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures.

(6) In such cases as may be prescribed it shall be the duty of every employer, if requested to do so by the safety representatives mentioned in paragraph (4), to establish, in accordance with regulations, a safety committee having the function of keeping under review the measures taken to ensure the health and safety at work of his employees and such other functions as may be prescribed.

**F5** mod. by SR 2000/87; 2000/120

**F6** enforcing authority DED for certain purposes—SR 1989/321

**F7** mod. by SR 2001/295

**F8** mod. by 2002 c. 8 (NI)

### General duties of employers and self-employed to persons other than their employees

**5**<sup>F9</sup>.—<sup>F10F11F12</sup>(1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

(2)<sup>F13</sup> It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.

(3) In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being his employees) who may be affected by the way in which he conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety.

**F9** mod. by SR 2000/87; 2000/120

**F10** enforcing authority DED for certain purposes—SR 1989/321

**F11** mod. by SR 2001/295

**F12** mod. by 2002 c. 8 (NI)

**F13** mod. by SR 1982/273; 1991/238; 1994/143; 2000/120; 2003/34

### General duties of persons concerned with premises to persons other than their employees

**6**<sup>F14</sup>.—<sup>F15F16</sup>(1) This Article has effect for imposing on persons duties in relation to those who—

- (a) are not their employees; but
- (b) use non-domestic premises made available to them as a place of work or as a place where they may use plant or substances provided for their use there,

and applies to premises so made available and other non-domestic premises used in connection with them.

(2) It shall be the duty of each person who has, to any extent, control of premises to which this Article applies or of the means of access thereto or egress therefrom or of any plant or substance in such premises to take such measures as it is reasonable for a person in his position to take to ensure, so far as is reasonably practicable, that the premises, all means of access thereto or egress therefrom available for use by persons using the premises, and any plant or substance in the premises or, as the case may be, provided for use there, is or are safe and without risks to health.

(3) Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to—

- (a) the maintenance or repair of any premises to which this Article applies or any means of access thereto or egress therefrom; or
- (b) the safety of or the absence of risks to health arising from plant or substances in any such premises;

that person shall be treated, for the purposes of paragraph (2), as being a person who has control of the matters to which his obligation extends.

(4) Any reference in this Article to a person having control of any premises or matter is a reference to a person having control of the premises or matter in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not).

**F14** mod. by SR 2000/87; 2000/120

**F15** enforcing authority DED for certain purposes—SR 1989/321

**F16** mod. by 2002 c. 8 (NI)

### General duties of manufacturers etc. as regards articles and substances for use at work

7 <sup>F17</sup>.—<sup>[F18F19F20F21F22]</sup>(1) It shall be the duty of any person who designs, manufactures, imports or supplies any article for use at work or any article of fairground equipment —

- (a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health at all times when it is being set, used, cleaned or maintained by a person at work;
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by sub-paragraph ( a );
- (c) to take such steps as are necessary to secure that persons supplied by that person with the article are provided with adequate information about the use for which the article is designed or has been tested and about any conditions necessary to ensure that it will be safe and without risks to health at all such times as are mentioned in sub#paragraph ( a ) and when it is being dismantled or disposed of; and
- (d) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of sub#paragraph ( c ) as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety.

(1A) It shall be the duty of any person who designs, manufactures, imports or supplies any article of fairground equipment —

- (a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health at all times when it is being used for or in connection with the entertainment of members of the public;
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by sub-paragraph ( a );
- (c) to take such steps as are necessary to secure that persons supplied by that person with the article are provided with adequate information about the use for which the article is designed or has been tested and about any conditions necessary to ensure that it will be safe and without risks to health at all times when it is being used for or in connection with the entertainment of members of the public; and
- (d) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of sub#paragraph ( c ) as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety.]

(2) It shall be the duty of any person who undertakes the design or manufacture of any article for use at work<sup>[F18]</sup> or of any article of fairground equipment] to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to health or safety to which the design or article may give rise.

(3) It shall be the duty of any person who erects or installs any article for use at work in any premises where that article is to be used by persons at work<sup>[F18]</sup> or who erects or installs any article of fairground equipment] to ensure, so far as is reasonably practicable, that nothing about the way in which<sup>[F18]</sup> the article is erected or installed makes it unsafe or a risk to health at any such time as is mentioned in paragraph (1)( a ) or, as the case may be, (1A)( a ).]

<sup>[F18]</sup>(4) It shall be the duty of any person who manufactures, imports or supplies any substance—

- (a) to ensure, so far as is reasonably practicable, that the substance will be safe and without risks to health at all times when it is being used, handled, processed, stored or transported by a person at work or in premises to which Article 6 applies;
  - (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by sub-paragraph ( a );
  - (c) to take such steps as are necessary to secure that persons supplied by that person with the substance are provided with adequate information about any risks to health or safety to which the inherent properties of the substance may give rise, about the results of any relevant tests which have been carried out on or in connection with the substance and about any conditions necessary to ensure that the substance will be safe and without risks to health at all such times as are mentioned in sub#paragraph ( a ) and when the substance is being disposed of; and
  - (d) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of sub#paragraph ( c ) as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety.]
- (5) It shall be the duty of any person who undertakes the manufacture of any<sup>[F18]</sup> substance] to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to health or safety to which the substance may give rise<sup>[F18]</sup> at all such times as are mentioned in paragraph (4)( a )].
- (6) Nothing in the provisions of this Article shall be taken to require a person to repeat any testing, examination or research which has been carried out otherwise than by him or at his instance, in so far as it is reasonable for him to rely on the results thereof for the purposes of those provisions.
- (7) Any duty imposed on any person by any of the preceding provisions of this Article shall extend only to things done in the course of a trade, business or other undertaking carried on by him (whether for profit or not) and to matters within his control.
- (8) Where a person designs, manufactures, imports or supplies an article<sup>[F18]</sup> for use at work or an article of fairground equipment and does so far or to another] on the basis of a written undertaking by that other to take specified steps sufficient to ensure, so far as is reasonably practicable, that the article will be safe and without risks to health<sup>[F18]</sup> at all such times as are mentioned in sub#paragraph ( a ) of paragraph (1) or as the case may be, in sub#paragraph ( a ) of paragraph (1A)], the undertaking shall have the effect of relieving the first-mentioned person from the duty imposed<sup>[F18]</sup> by virtue of that sub#paragraph] to such extent as is reasonable having regard to the terms of the undertaking.
- <sup>[F18]</sup>(8A) Nothing in paragraph (7) or (8) shall relieve any person who imports any article or substance from any duty in respect of anything which—
- (a) in the case of an article designed outside the United Kingdom, was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who designed the article; or
  - (b) in the case of an article or substance manufactured outside the United Kingdom, was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who manufactured the article or substance.]
- (9) Where a person ( “the ostensible supplier”) supplies any<sup>[F18]</sup> article or substance] to another ( “the customer”) under a hire-purchase agreement, conditional sale agreement or credit-sale agreement, and the ostensible supplier—
- (a) carries on the business of financing the acquisition of goods by others by means of such agreements; and

*Status: Point in time view as at 01/09/2013.*

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- (b) in the course of that business acquired his interest in the article or substance supplied to the customer as a means of financing its acquisition by the customer from a third person (“the effective supplier”),

the effective supplier and not the ostensible supplier shall be treated for the purposes of this Article as supplying the article or substance to the customer, and any duty imposed by this Article on suppliers shall accordingly fall on the effective supplier and not on the ostensible supplier.

[<sup>F18</sup>(10) For the purposes of this Article an absence of safety or a risk to health shall be disregarded in so far as the case in or in relation to which it would arise is shown to be one the occurrence of which could not reasonably be foreseen; and in determining whether any duty imposed by virtue of sub#paragraph ( a) of paragraph (1), (1A) or (4) has been performed regard shall be had to any relevant information or advice which has been provided to any person by the person by whom the article has been designed, manufactured, imported or supplied or, as the case may be, by the person by whom the substance has been manufactured, imported or supplied.]

**F17** mod. by SR 2000/87; 2000/120  
**F18** 1987 NI 20  
**F19** enforcing authority DED for certain purposes—SR 1989/321  
**F20** mod. by SR 1985/273; 1990/147; 1993/27  
**F21** mod. by SR 2000/375  
**F22** mod. by 2002 c. 8 (NI)

### General duties of employees at work

<sup>F23F24F25F26</sup>8. It shall be the duty of every employee while at work—

- (a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and
- (b) as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

**F23** mod. by SR 2000/87; 2000/120  
**F24** enforcing authority DED for certain purposes—SR 1989/321  
**F25** mod. by SR 2001/295  
**F26** mod. by 2002 c. 8 (NI)

#### Modifications etc. (not altering text)

**C2** Art. 8 modified (23.10.2015) by [The Genetically Modified Organisms \(Contained Use\) Regulations \(Northern Ireland\) 2015 \(S.R. 2015/339\)](#), regs. 1, **4(2)** (with reg. 3(1)(2))

### Duty not to interfere with or misuse things provided pursuant to certain provisions

<sup>F27</sup> <sup>F28F29</sup>9 No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of any of the relevant statutory provisions.

**F27** mod. by SR 2000/87; 2000/120  
**F28** enforcing authority DED for certain purposes—SR 1989/321  
**F29** mod. by 2002 c. 8 (NI)

### Duty not to charge employees for things done or provided pursuant to certain specific requirements

**10** <sup>F30</sup>. <sup>F31</sup>No employer shall levy or permit to be levied on any employee of his any charge in respect of anything done or provided in pursuance of any specific requirement of the relevant statutory provisions.

**F30** mod. by SR 2000/87; 2000/120

**F31** mod. by 2002 c. 8 (NI)

### General duty of the Department concerned

**11** <sup>F32</sup>. <sup>F33</sup>In addition to the other functions conferred on the Department concerned under this Order, it shall be the general duty of that Department to do such things and make such arrangements as it considers appropriate for the general purposes of this Part.

**F32** mod. by SR 2000/87; 2000/120

**F33** mod. by 2002 c. 8 (NI)

### *The Health and Safety<sup>F34</sup> Executive] for Northern Ireland*

**F34** 1998 NI 18

### Establishment of the<sup>F35</sup> Executive]

**12** <sup>F36</sup>. <sup>F37</sup>(1) There shall be established a body to be called the Health and Safety<sup>F35</sup> Executive] for Northern Ireland consisting of a chairman appointed by the Head of the Department and not less than six nor more than nine other members appointed by the Head of the Department in accordance with paragraph (2).

(2) Before appointing the members of the<sup>F35</sup> Executive] (other than the chairman) the Head of the Department shall—

- (a) as to three of them, consult such organisations representing employers as he considers appropriate;
- (b) as to three others, consult such organisations representing employees as he considers appropriate; and
- (c) as to any other members he may appoint, consult such organisations representing district councils and such other organisations, other than the organisations mentioned in subparagraph ( a ) or ( b ), as he considers appropriate.

<sup>F35</sup>(2A) The Head of the Department may, after consultation with the Executive, appoint one of the members to be deputy chairman of the Executive.]

(3) The<sup>F35</sup> Executive] shall have such functions as are conferred on it under the succeeding provisions of this Order.

(4) The provisions of Schedule 2 shall have effect with respect to the<sup>F35</sup> Executive].

<sup>F35</sup>(5) The functions of the Executive, and of its officers and servants, shall be performed on behalf of the Crown.

*Status: Point in time view as at 01/09/2013.*

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(6) For the purpose of any civil proceedings arising out of those functions, the Crown Proceedings Act 1947 shall apply to the Executive as if it were a Department of Her Majesty's Government in Northern Ireland within the meaning of that Act.

(7) The Department may by order subject to negative resolution amend paragraph (1) so far as it regulates the number of members of the Executive.]

**F35** 1998 NI 18

**F36** mod. by SR 2000/87; 2000/120

**F37** mod. by 2002 c. 8 (NI)

### Functions of the<sup>F38</sup> Executive]

**13**<sup>F39</sup>.—<sup>F38F40</sup>(1) In addition to the other functions conferred on the Executive under this Order, but subject to paragraph (4), it shall be the general duty of the Executive to do such things and make such arrangements as it considers appropriate for the general purposes of this Part.

(1A) It shall be the duty of the Executive—

- (a) to assist and encourage persons concerned with matters relevant to any of the general purposes of this Part to further those purposes;
- (b) to make such arrangements as it considers appropriate for securing that government departments, employers, employees, organisations representing employers and employees respectively, and other persons concerned with matters relevant to any of those purposes are provided with an information and advisory service and are kept informed of, and adequately advised on, such matters;
- (c) to submit to the Department concerned such proposals as the Executive considers appropriate for the making of regulations under any of the relevant statutory provisions.]

(2) The<sup>F38</sup> Executive], in accordance with Article 18, may prepare and issue codes of practice and may approve codes of practice prepared by other persons.

(3) The<sup>F38</sup> Executive] may,<sup>F38</sup> . . .

- (a) make such arrangements as it considers appropriate for—
  - (i) the carrying out of, and the publication of the results of, research; and
  - (ii) the provision of training and information;
 

in connection with the purposes of this Part; and
- (b) encourage research and the provision of training and information in that connection by others;
- (c) generally promote health and safety at work.

(4) The<sup>F38</sup> Executive] shall—

- (a) submit to the Department particulars of what it proposes to do for the purpose of performing its functions<sup>F38</sup> . . . ; and
- (b) subject to sub-paragraph ( c ), ensure that its activities are in accordance with proposals approved by the Department; and
- (c) give effect to any directions given to it by the Department.

**F38** 1998 NI 18

**F39** mod. by SR 2000/87; 2000/120

**F40** mod. by 2002 c. 8 (NI)



## Control of the<sup>F41</sup> Executive] by the Department

14<sup>F42</sup>.<sup>F43</sup> The Department may—

- (a) approve, with or without modifications, any proposals submitted to it in pursuance of Article 13(4)( a);
- (b) give to the<sup>F41</sup> Executive] at any time such directions as the Department thinks fit with respect to the functions of the<sup>F41</sup> Executive].

**F41** 1998 NI 18

**F42** mod. by SR 2000/87; 2000/120

**F43** mod. by 2002 c. 8 (NI)

## Additional functions of the<sup>F44</sup> Executive]

15<sup>F45</sup>.—<sup>F46</sup>(1) The<sup>F44</sup> Executive] may—

- (a) make agreements with any government department or other person for that department or person to perform on behalf of the<sup>F44</sup> Executive][<sup>F44</sup> (with or without payment)] any of the functions of the<sup>F44</sup> Executive];
- (b) subject to paragraph (2), make agreements with any Minister of the Crown, government department or public authority for the<sup>F44</sup> Executive] to perform on behalf of that Minister, department or authority (with or without payment) functions exercisable by the Minister, department or authority, being functions which in the opinion of the Department can appropriately be performed by the<sup>F44</sup> Executive] in connection with any of the<sup>F44</sup> Executive] 's functions;
- <sup>F44</sup>(bb) provide (with or without payment) services or facilities required otherwise than for the general purposes of this Part in so far as they are required by any government department or other public authority in connection with the exercise by that department or authority of any of its functions;]
- (c) appoint persons or committees of persons to provide the<sup>F44</sup> Executive] with advice in connection with any of its functions and (without prejudice to the generality of the following sub-paragraph) pay to persons so appointed such remuneration as the Department, with the approval of the Department of the Civil Service, may determine;
- (d) in connection with any of the functions of the<sup>F44</sup> Executive], pay to any person such travelling and subsistence allowances and such compensation for loss of remunerative time as the Department, with the approval of the Department of the Civil Service, may determine;
- (e) carry out or arrange for or make payments in respect of, research into any matter connected with any of the<sup>F44</sup> Executive] 's functions, and disseminate or arrange for or make payments in respect of the dissemination of, information derived from such research;
- (f) include, in any arrangements made by the<sup>F44</sup> Executive] for the provision of facilities or services by it or on its behalf, provision for the making of payments to the<sup>F44</sup> Executive] or any person acting on its behalf by other parties to the arrangements and by persons who use those facilities or services.

(2) Nothing in paragraph (1)( b) shall authorise the<sup>F44</sup> Executive] to perform any function of a Minister, department or authority which consists of a power to make regulations or other instruments of a legislative character.

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*Changes to legislation: There are currently no known outstanding effects for the Health and Safety at Work (Northern Ireland) Order 1978, PART II. (See end of Document for details)*

- F44** 1998 NI 18  
**F45** mod. by SR 2000/87; 2000/120  
**F46** mod. by 2002 c. 8 (NI)

### *Investigations and inquiries*

#### **Investigations and inquiries**

**16**<sup>F47</sup>.—<sup>F48</sup>(1) This Article applies to the following matters, that is to say any accident, occurrence, situation or other matter whatsoever which<sup>F49</sup> . . . [<sup>F50F49</sup> . . . the Executive] thinks it necessary or expedient to investigate for any of the general purposes of this Part or with a view to the making of regulations for those purposes.

(2) <sup>F49</sup> . . . [<sup>F50F49</sup> . . . the Executive] may at any time—

- (a) investigate or authorise any other person to investigate, and make a special report on any matter to which this Article applies; or
- (b) cause an inquiry to be held into any such matter.

(3) Any inquiry held by virtue of paragraph (2)( *b*) shall be held in accordance with regulations, and shall be held in public except where or to the extent that the regulations provide otherwise.

(4) Regulations made under paragraph (3) may in particular include provision—

- (a) conferring on the person holding any such inquiry, and any person assisting him in the inquiry, powers of entry and inspection;
- (b) conferring on any such person powers of summoning witnesses to give evidence or produce documents and power to take evidence on oath and administer oaths or require the making of declarations;
- (c) requiring any such inquiry to be held otherwise than in public where or to the extent that a Minister of the Crown or Head of the Department concerned so directs.

(5) In the case of a special report made by virtue of paragraph (2)( *a*)<sup>F49</sup> . . . [<sup>F50F49</sup> . . . the Executive] may cause the report, or so much of it as<sup>F49</sup> . . . [<sup>F50F49</sup> . . . the Executive] thinks fit, to be made public at such time and in such manner as<sup>F49</sup> . . . [<sup>F50F49</sup> . . . the Executive] thinks fit.

(6) <sup>F49</sup> . . . [<sup>F50F49</sup> . . . the Executive]

- (a) in the case of an investigation and special report made by virtue of paragraph (2)( *a*), may pay to the person making it such remuneration and expenses as<sup>F49</sup> . . . [<sup>F50F49</sup> . . . the Executive], with the approval of the Department of the Civil Service, may determine;
- (b) in the case of an inquiry held by virtue of paragraph (2)( *b*), may pay to the person holding it and to any assessor appointed to assist him such remuneration and expenses, and to persons attending the inquiry as witnesses such expenses, as<sup>F49</sup> . . . [<sup>F50F49</sup> . . . the Executive], with the like approval, may determine; and
- (c) may, to such extent as<sup>F49</sup> . . . [<sup>F50F49</sup> . . . the Executive] may determine, defray the other costs, if any, of any such investigation and special report or inquiry.

- F47** mod. by SR 2000/87; 2000/120  
**F48** mod. by 2002 c. 8 (NI)  
**F49** 2005 c. 12  
**F50** 1998 NI 18

*Health and safety regulations and approved codes of practice*

**Health and safety regulations**

17<sup>F51</sup> —<sup>F52F53</sup> (1) Subject to Article 46, regulations (in this Order referred to as “health and safety regulations”) may provide for any of the general purposes of this Part.

(2) Without prejudice to the generality of paragraph (1), health and safety regulations may for any of the general purposes of this Part make provision for any of the purposes mentioned in Schedule 3.

(3) Health and safety regulations—

- (a) may repeal or modify any of the existing statutory provisions;
- (b) may exclude or modify in relation to any specified class of case any of the provisions of Articles 4 to 10 or any of the existing statutory provisions;
- (c) may make a specified authority or class of authorities responsible, to such extent as may be specified, for the enforcement of any of the relevant statutory provisions.

(4) Health and safety regulations—

- (a) may impose requirements by reference to the approval of the<sup>F54</sup> Executive] or any other specified body or person;
- (b) may provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time.

(5) Health and safety regulations—

- (a) may provide (either unconditionally or subject to conditions, and with or without limit of time) for exemptions from any requirement or prohibition imposed by or under any of the relevant statutory provisions;
- (b) may enable exemptions from any requirement or prohibition imposed by or under any of the relevant statutory provisions to be granted (either unconditionally or subject to conditions, and with or without limit of time) by any specified person or by any person authorised in that behalf by a specified authority.

(6) Health and safety regulations—

- (a) may specify the persons who, in the event of a contravention of a requirement or prohibition imposed by or under the regulations, are to be guilty of an offence, whether in addition to or to the exclusion of other persons;
- (b) may provide for any specified defence to be available in proceedings for any offence under the relevant statutory provisions either generally or in specified circumstances;
- (c) may exclude proceedings on indictment in relation to offences consisting of a contravention of a requirement or prohibition imposed by or under any of the existing statutory provisions, Articles 4 to 10 or health and safety regulations;
- (d) may restrict the punishments (other than the maximum fine on conviction on indictment) which can be imposed in respect of any such offence as is mentioned in sub-paragraph (c).
- (e) <sup>F55</sup> .....

(7) Without prejudice to Article 33, health and safety regulations may make provision for enabling offences under any of the relevant statutory provisions to be treated as having been committed at any specified place for the purpose of bringing any such offence within the field of responsibility of any enforcing authority or conferring jurisdiction on any court to entertain proceedings for any such offence.

(8) In this Article “specified” means specified in health and safety regulations.

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Safety at Work (Northern Ireland) Order 1978, PART II. (See end of Document for details)*

- F51** mod. by SR 2000/87; 2000/120  
**F52** mod. by SR 2000/194  
**F53** mod. by 2002 c. 8 (NI)  
**F54** 1998 NI 18  
**F55** Art. 17(6)(e) repealed (16.1.2009) by Health and Safety (Offences) Act 2008 (c. 20), ss. 2, 3(2), Sch. 3 para. 3(1), Sch. 4 (with s. 3(3))

### Approval of codes of practice by the<sup>F56</sup> Executive]

<sup>F57F58</sup>**18.**—(1) For the purpose of providing practical guidance with respect to the requirements of any provision of Articles 4 to 8 or of health and safety regulations or of any of the existing statutory provisions, the<sup>F56</sup> Executive] may, subject to paragraph (2)—

- (a) approve and issue such codes of practice (whether prepared by it or not) as in its opinion are suitable for that purpose;
- (b) approve such codes of practice issued or proposed to be issued otherwise than by the<sup>F56</sup> Executive] as in its opinion are suitable for that purpose.

(2) The<sup>F56</sup> Executive] shall not approve a code of practice under paragraph (1) without the consent of the Department concerned, and shall, before seeking its consent, consult—

- (a) any government department or other body that appears to the<sup>F56</sup> Executive] to be appropriate (and in particular, in the case of a code relating to electro-magnetic radiations, the Department of Health and Social Services<sup>F59</sup> ...); and
- (b) such government departments and other bodies, if any, as in relation to any matter dealt with in the code, the<sup>F56</sup> Executive] is required to consult under this Article by virtue of directions given to it by the Department.

(3) Where a code of practice is approved by the<sup>F56</sup> Executive] under paragraph (1), the<sup>F56</sup> Executive] shall issue a notice in writing—

- (a) identifying the code in question and stating the date on which its approval by the<sup>F56</sup> Executive] is to take effect; and
- (b) specifying for which of the provisions mentioned in paragraph (1) the code is approved.

(4) The<sup>F56</sup> Executive] may—

- (a) revise the whole or any part of any code of practice prepared by it in pursuance of this Article;
- (b) approve any revision or proposed revision of the whole or any part of any code of practice for the time being approved under this Article;

and the provisions of paragraphs (2) and (3) shall, with the necessary modifications, apply in relation to the approval of any revision under this paragraph as they apply in relation to the approval of a code of practice under paragraph (1).

(5) The<sup>F56</sup> Executive] may at any time with the consent of the Department concerned withdraw its approval from any code of practice approved under this Article, but before seeking the consent of that Department shall consult the same government departments and other bodies as it would be required to consult under paragraph (2) if it were proposing to approve the code.

(6) Where under paragraph (5) the<sup>F56</sup> Executive] withdraws its approval from a code of practice approved under this Article, the<sup>F56</sup> Executive] shall issue a notice in writing identifying the code in question and stating the date on which its approval of it is to cease to have effect.

(7) References in this Part to an approved code of practice are references to that code as it has effect for the time being by virtue of any revision of the whole or any part of it approved under this Article.

(8) The power of the<sup>F56</sup> Executive] under paragraph (1)( b) to approve a code of practice issued or proposed to be issued otherwise than by the<sup>F56</sup> Executive] shall include power to approve a part of such a code of practice; and accordingly in this Part “code of practice” may be read as including a part of such a code of practice.

**F56** 1998 NI 18

**F57** mod. by SR 2000/87; 2000/120

**F58** mod. by 2002 c. 8 (NI)

**F59** Words in art. 18(2)(a) omitted (1.4.2013) by virtue of [The National Treatment Agency \(Abolition\) and the Health and Social Care Act 2012 \(Consequential, Transitional and Saving Provisions\) Order 2013 \(S.I. 2013/235\)](#), art. 1(2), [Sch. 2 para. 7\(2\)](#)

**Modifications etc. (not altering text)**

**C3** Arts. 18-30 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), [reg. 14\(1\)\(a\)](#)

**C4** Arts. 18-30 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), [reg. 14\(1\)\(a\)](#)

**Use of approved codes of practice in criminal proceedings**

<sup>F60F61</sup>19.—(1) A failure on the part of any person to observe any provision of an approved code of practice shall not of itself render him liable to any civil or criminal proceedings; but where in any criminal proceedings a party is alleged to have committed an offence by reason of a contravention of any requirement or prohibition imposed by or under any such provision as is mentioned in Article 18(1) being a provision for which there was an approved code of practice at the time of the alleged contravention, the following paragraph shall have effect with respect to that code in relation to those proceedings.

(2) Any provision of the code of practice which appears to the court to be relevant to the requirement or prohibition alleged to have been contravened shall be admissible in evidence in the proceedings; and if it is proved that there was at any material time a failure to observe any provision of the code which appears to the court to be relevant to any matter which it is necessary for the prosecution to prove in order to establish a contravention of that requirement or prohibition, that matter shall be taken as proved unless the court is satisfied that the requirement or prohibition was in respect of that matter complied with otherwise than by way of observance of that provision of the code.

(3) In any criminal proceedings—

- (a) a document purporting to be a notice issued by the<sup>F62</sup> Executive] under Article 18 shall be taken to be such a notice unless the contrary is proved; and
- (b) a code of practice which appears to the court to be the subject of such a notice shall be taken to be the subject of that notice unless the contrary is proved.

**F60** mod. by SR 2000/87; 2000/120

**F61** mod. by 2002 c. 8 (NI)

**F62** 1998 NI 18

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Safety at Work (Northern Ireland) Order 1978, PART II. (See end of Document for details)*

**Modifications etc. (not altering text)**

- C5** Arts. 18-30 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(a)**
- C6** Arts. 18-30 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(a)**

*Enforcement*

**Authorities responsible for enforcement of the relevant statutory provisions**

<sup>F63F64</sup>**20.**—(1) It shall be the duty of the Department concerned [<sup>F65</sup> and the Executive] to make adequate arrangements for the enforcement of the relevant statutory provisions except to the extent that some other authority is by any of those provisions or by regulations under paragraph (2) made responsible for their enforcement.

[<sup>F65</sup>(2) Regulations may—

- (a) make a specified authority or authorities of any specified class responsible for the enforcement of the relevant statutory provisions to such extent as may be prescribed;
- (b) make provision for enabling responsibility for enforcing any of the relevant statutory provisions to be, to such extent as may be determined under the regulations—
  - (i) transferred from the Executive to a specified authority or from that authority to the Executive; or
  - (ii) assigned to the Executive or to a specified authority for the purpose of removing any uncertainty as to what are under this paragraph their respective responsibilities for the enforcement of those provisions;

and any regulations made in pursuance of sub-paragraph (b) shall include provision for securing that any transfer or assignment effected under the regulations is brought to the notice of persons affected by it.]

(3) Any provision made by regulations under paragraph (2) shall have effect subject to any provision made by health and safety regulations in pursuance of Article 17(3)(c).

(4) Where any authority other than the Department concerned [<sup>F65</sup> or the Executive] is by any of the relevant statutory provisions or by regulations under paragraph (2) made responsible for the enforcement of any of those provisions to any extent, that authority shall—

- (a) make adequate arrangements for the enforcement of those provisions to that extent; and
- (b) perform the duty imposed on it by sub-paragraph (a) and any other functions conferred on it by any of the relevant statutory provisions [<sup>F65</sup> in accordance with such guidance as the Executive may give to the authority].

**F63** mod. by SR 2000/87; 2000/120

**F64** mod. by 2002 c. 8 (NI)

**F65** 1998 NI 18

**Modifications etc. (not altering text)**

- C7** Art. 20 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**
- C8** Arts. 18-30 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(a)**

- C9** Arts. 18-30 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(a)**
- C10** Arts. 20-28 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(a)** (with regs. 3, 8-15, 19)

### Appointment of inspectors

<sup>F66F67</sup>**21.**—(1) Every enforcing authority may appoint as inspectors (under whatever title it may determine) such persons having suitable qualifications as it thinks necessary for carrying into effect the relevant statutory provisions within its field of responsibility, and may terminate any appointment made under this Article.

(2) Every appointment of a person as an inspector under this Article shall be made in writing specifying which of the powers conferred on inspectors by the relevant statutory provisions are to be exercisable by the person appointed; and an inspector shall in right of his appointment under this Article—

- (a) be entitled to exercise only such of those powers as are so specified; and
- (b) be entitled to exercise the powers so specified only within the field of responsibility of the authority which appointed him.

(3) So much of an inspector's written appointment as specifies the powers which he is entitled to exercise may be varied by the enforcing authority which appointed him.

(4) An inspector shall, if so required when exercising or seeking to exercise any power conferred on him by any of the relevant statutory provisions, produce his written appointment or a duly authenticated copy thereof.

**F66** mod. by SR 2000/87; 2000/120

**F67** mod. by 2002 c. 8 (NI)

#### Modifications etc. (not altering text)

- C10** Arts. 20-28 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(a)** (with regs. 3, 8-15, 19)
- C11** Art. 21 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**
- C12** Arts. 18-30 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(a)**
- C13** Arts. 18-30 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(a)**
- C14** Art. 21 applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(a)**
- C15** Art. 21 applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(a)** (with reg. 3)

### Powers of inspectors

<sup>F68F69</sup>**22.**—(1) Subject to the provisions of Article 21 and this Article, an inspector may, for the purpose of carrying into effect any of the relevant statutory provisions within the field of responsibility of the enforcing authority which appointed him, exercise the powers set out in paragraph (2).

- (2) The powers of an inspector referred to in paragraph (1) are the following, namely—
- (a) at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) to enter any premises which he has reason to believe it is necessary for him to enter for the purpose mentioned in paragraph (1);
  - (b) to take with him a constable if he has reasonable cause to apprehend any serious obstruction in the execution of his duty;
  - (c) without prejudice to sub-paragraph ( b ), on entering any premises by virtue of sub-paragraph ( a ) to take with him—
    - (i) any other person duly authorised in writing by his (the inspector's) enforcing authority; and
    - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
  - (d) to make such examination and investigation as may in any circumstances be necessary for the purpose mentioned in paragraph (1);
  - (e) as regards any premises which he may enter, to direct that those premises or any part of them, or anything therein, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph ( d );
  - (f) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph ( d );
  - (g) to take samples of any articles or substances found in any premises which he may enter, and the atmosphere in or in the vicinity of any such premises;
  - (h) in the case of any article or substance found in any premises which he may enter, being an article or substance which appears to him to have caused or to be likely to cause danger to health or safety, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purpose mentioned in paragraph (1));
  - (i) in the case of any such article or substance as is mentioned in sub-paragraph ( h ), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
    - (i) to examine it and do to it anything which he may do under that sub-paragraph;
    - (ii) to ensure that it is not tampered with before his examination of it is completed;
    - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under any of the relevant statutory provisions or any proceedings relating to a notice under Article 23 or 24;
  - (j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph ( d ) to answer (in the absence of persons other than a person nominated by him to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;
  - (k) to require the production of, inspect, and take copies of or of any entry in—
    - (i) any books or documents which by virtue of any of the relevant statutory provisions are required to be kept; and
    - (ii) any other books or documents which it is necessary for him to see for the purposes of any examination or investigation under sub-paragraph ( d );



- (l) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this Article;
- (m) any other power which is necessary for the purpose mentioned in paragraph (1).
- (3) The Department concerned may by regulations make provision as to the procedure to be followed in connection with the taking of samples under paragraph (2)( g) (including provision as to the way in which samples that have been so taken are to be dealt with).
- (4) Where an inspector proposes to exercise the power conferred by paragraph (2)( h) in the case of an article or substance found in any premises he shall offer to any person who at the time is present in and has responsibilities in relation to those premises, the opportunity to be present at anything which is to be done by virtue of that power unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of the State.
- (5) Before exercising the power conferred by paragraph (2)( h) in the case of any article or substance, an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.
- (6) Where under the power conferred by paragraph (2)( i) an inspector takes possession of any article or substance found in any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample thereof and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.
- (7) No answer given by a person in pursuance of a requirement imposed under paragraph (2)( j) shall be admissible in evidence against that person or the<sup>F70</sup> spouse or civil partner] of that person in any proceedings.
- (8) Nothing in this Article shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.

**F68** mod. by SR 2000/87; 2000/120

**F69** mod. by 2002 c. 8 (NI)

**F70** 2004 c.33

**Modifications etc. (not altering text)**

- C10** Arts. 20-28 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(a)** (with regs. 3, 8-15, 19)
- C16** Art. 22 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**
- C17** Arts. 18-30 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(a)**
- C18** Arts. 18-30 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(a)**
- C19** Art. 22 applied in part (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(a)**

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Safety at Work (Northern Ireland) Order 1978, PART II. (See end of Document for details)*

**C20** Art. 22 excluding art. 22(3) applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(a)** (with [reg. 3](#))

### Improvement notices

<sup>F71F72</sup>**23.** If an inspector is of the opinion that a person—

- (a) is contravening one or more of the relevant statutory provisions; or
- (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,

he may serve on him a notice—

- (i) stating that he is of that opinion;
- (ii) specifying the provision or provisions as to which he is of that opinion;
- (iii) giving particulars of the reasons why he is of that opinion; and
- (iv) requiring that person to remedy the contravention or, as the case may be, the matters occasioning it within such period (ending not earlier than the period within which an appeal against the notice can be brought under Article 26) as may be specified in the notice.

**F71** mod. by SR 2000/87; 2000/120

**F72** mod. by [2002 c. 8 \(NI\)](#)

### Modifications etc. (not altering text)

- C10** Arts. 20-28 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), [regs. 2\(1\), 7\(1\)\(a\)](#) (with [regs. 3, 8-15, 19](#))
- C21** Arts. 23 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**
- C22** Arts. 18-30 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(a)**
- C23** Arts. 18-30 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(a)**
- C24** Art. 23 applied (with modifications) (10.5.2010 with effect as mentioned in [reg. 41](#) of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), [regs. 1\(2\), 40\(2\)\(3\)\(b\)](#)
- C25** Art. 23 applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(b)** (with [reg. 3](#))

### Prohibition notices

<sup>F73F74</sup>**24.**—(1) This Article applies to any activities which are being or are<sup>[F75 likely]</sup> to be carried on by or under the control of any person, being activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities are so carried on, apply.

(2) If as regards any activities to which this Article applies an inspector is of the opinion that, as carried on or<sup>[F75 likely]</sup> to be carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve a risk of serious personal injury, the inspector may serve on that person a notice—

- (a) stating that the inspector is of the said opinion;

- (b) specifying the matters which in his opinion give or, as the case may be, will give rise to the said risk;
- (c) where in his opinion any of those matters involves or, as the case may be, will involve a contravention of any of the relevant statutory provisions, stating that he is of that opinion, and
  - (i) specifying the provision or provisions as to which he is of that opinion; and
  - (ii) giving particulars of the reasons why he is of that opinion; and
- (d) directing that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of sub-paragraph ( b) and any associated contravention of provisions so specified in pursuance of sub-paragraph ( c) have been remedied.

[<sup>F75</sup>(3) A direction contained in a prohibition notice in pursuance of paragraph (2)( d) shall take effect—

- (a) at the end of the period specified in the notice; or
- (b) if the notice so declares, immediately.]

**F73** mod. by SR 2000/87; 2000/120

**F74** mod. by 2002 c. 8 (NI)

**F75** 1987 NI 20

**Modifications etc. (not altering text)**

- C10** Arts. 20-28 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(a)** (with regs. 3, 8-15, 19)
- C26** Art. 24 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**
- C27** Arts. 18-30 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(a)**
- C28** Arts. 18-30 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(a)**
- C29** Art. 24 applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(b)**
- C30** Art. 24 applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(b)** (with reg. 3)

**Provisions supplementary to Articles 23 and 24**

<sup>F76F77</sup>**25.**—(1) In this Article and Article 26 “a notice” means an improvement notice or a prohibition notice.

(2) A notice may include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions—

- (a) may be framed to any extent by reference to any approved code of practice; and
- (b) may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.

(3) Where any of the relevant statutory provisions applies to a building or any matter connected with a building and an inspector proposes to serve an improvement notice relating to a contravention of that provision in connection with that building or matter, the notice shall not direct any measures to

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be taken to remedy the contravention of that provision which are more onerous than those necessary to secure conformity with the requirements of any building regulations for the time being in force to which that building or matter would be required to conform if the relevant building were being newly erected unless the provision in question imposes specific requirements more onerous than the requirements of any such building regulations to which the building or matter would be required to conform as aforesaid.

(4) In paragraph (3) “the relevant building”, in the case of a building, means that building, and, in the case of a matter connected with a building, means the building with which the matter is connected.

(5) Before an inspector serves in connection with any premises used or about to be used as a place of work a notice requiring or likely to lead to the taking of measures affecting the means of escape in case of fire with which the premises are or ought to be provided, he shall consult [<sup>F78</sup>the Northern Ireland Fire and Rescue Service Board] .

(6) Where a notice which is not to take immediate effect has been served—

- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified therein in pursuance of Article 23 or Article 24(3) as the case may be; and
- (b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.

**F76** mod. by SR 2000/87; 2000/120

**F77** mod. by 2002 c. 8 (NI)

**F78** Words in art. 25(5) substituted (1.7.2006) by [Fire and Rescue Services \(Northern Ireland\) Order 2006 \(S.I. 2006/1254 \(N.I. 9\)\)](#), arts. 1(3), 63(1), **Sch. 3 para. 11** (with arts. 49, 62); S.R. 2006/257, **art. 2(b)(d)**

#### **Modifications etc. (not altering text)**

- C10** Arts. 20-28 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(a)** (with regs. 3, 8-15, 19)
- C31** Art. 25 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**
- C32** Arts. 18-30 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(a)**
- C33** Arts. 18-30 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(a)**
- C34** Art. 25 applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(c)**
- C35** Art. 25 excluding art. 25(3) applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(c)** (with reg. 3)

#### **Appeal against improvement or prohibition notice**

<sup>F79F80</sup>**26.**—(1) A person on whom a notice is served may within such period from the date of its service as may be prescribed appeal to an industrial tribunal; and on such an appeal the tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal may in the circumstances think fit.

(2) Where an appeal under this Article is brought against a notice within the period allowed under paragraph (1) then—

- (a) in the case of an improvement notice, the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal;
  - (b) in the case of a prohibition notice, the bringing of the appeal shall have the like effect if, but only if, on the application of the appellant the tribunal so directs (and then only from the giving of the direction).
- (3) One or more assessors may be appointed for the purposes of any proceedings brought before an industrial tribunal under this Article.

*Para.(4) rep. by 1984 NI 9*

**F79** mod. by SR 2000/87; 2000/120

**F80** mod. by 2002 c. 8 (NI)

**Modifications etc. (not altering text)**

- C10** Arts. 20-28 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(a)** (with regs. 3, 8-15, 19)
- C36** Art. 26 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**
- C37** Arts. 18-30 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(a)**
- C38** Arts. 18-30 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(a)**
- C39** Art. 26 applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(d)**
- C40** Art. 26 applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(d)** (with reg. 3)

**Power to deal with cause of imminent danger**

<sup>F81F82</sup>**27.**—(1) Where, in the case of any article or substance found by him in any premises which he has power to enter, an inspector has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious personal injury, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).

(2) Before there is rendered harmless under this Article—

- (a) any article that forms part of a batch of similar articles; or
- (b) any substance,

the inspector shall, if it is practicable for him to do so, take a sample thereof and give to a responsible person at the premises where the article or substance was found by him a portion of the sample marked in a manner sufficient to identify it.

(3) As soon as may be after any article or substance has been seized and rendered harmless under this Article, the inspector shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall—

- (a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and
- (b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Safety at Work (Northern Ireland) Order 1978, PART II. (See end of Document for details)*

and if, where sub-paragraph ( b ) applies, the inspector cannot after reasonable enquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under sub-paragraph ( a ).

**F81** mod. by SR 2000/87; 2000/120

**F82** mod. by 2002 c. 8 (NI)

**Modifications etc. (not altering text)**

**C10** Arts. 20-28 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(a)** (with regs. 3, 8-15, 19)

**C41** Arts. 18-30 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(a)**

**C42** Arts. 18-30 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(a)**

**[<sup>F83</sup>Power of customs officer to detain articles and substances**

<sup>F84F85</sup>**27A.**—(1) A customs officer may, for the purpose of facilitating the exercise or performance by any enforcing authority or inspector of any of the powers or duties of the authority or inspector under any of the relevant statutory provisions, seize any imported article or imported substance and detain it for not more than two working days.

(2) Anything seized and detained under this Article shall be dealt with during the period of its detention in such manner as the Commissioners of Customs and Excise may direct.

(3) In paragraph (1) the reference to two working days is a reference to a period of forty#eight hours calculated from the time when the goods in question are seized but disregarding so much of any period as falls on a Saturday or Sunday or on Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in Northern Ireland.]

**F83** 1987 NI 20

**F84** mod. by SR 2000/87; 2000/120

**F85** mod. by 2002 c. 8 (NI)

**Modifications etc. (not altering text)**

**C10** Arts. 20-28 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(a)** (with regs. 3, 8-15, 19)

**C43** Arts. 18-30 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(a)**

**C44** Arts. 18-30 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(a)**

**Power of enforcing authorities to indemnify their inspectors**

<sup>F86F87</sup>**28.** Where—

- (a) an action has been brought against an inspector in respect of an act done in the execution or purported execution of any of the relevant statutory provisions; and
- (b) the circumstances are such that he is not legally entitled to require the enforcing authority which appointed him to indemnify him,

that authority may, nevertheless, indemnify him against the whole or part of any damages and costs which he may have been ordered to pay or may have incurred, if the authority is satisfied that he honestly believed that the act complained of was within his powers and that his duty as an inspector required or entitled him to do it.

**F86** mod. by SR 2000/87; 2000/120

**F87** mod. by 2002 c. 8 (NI)

#### Modifications etc. (not altering text)

**C10** Arts. 20-28 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(a)** (with regs. 3, 8-15, 19)

**C45** Art. 28 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**

**C46** Arts. 18-30 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(a)**

**C47** Arts. 18-30 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(a)**

**C48** Art. 28 applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(e)**

**C49** Art. 28 applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(e)** (with reg. 3)

### Obtaining and disclosure of information

#### Obtaining of information

<sup>F88F89</sup>**29.**—(1) For the purpose of obtaining—  
*Sub#para.(a) rep. by 1998 NI 18*

(b) any information which an enforcing authority needs for the discharge of the authority's functions,

the Department concerned, or the<sup>F90</sup> Executive]<sup>F90</sup>. . . , may serve on any person a notice requiring that person to furnish to the<sup>F90</sup> Executive] or, as the case may be, to the enforcing authority in question such information about such matters as may be specified in the notice, and to do so in such form and manner and within such time as may be so specified.

*Paras.(2)#(4) rep. by 1988 NI 3*

**F88** mod. by SR 2000/87; 2000/120

**F89** mod. by 2002 c. 8 (NI)

**F90** 1998 NI 18

#### Modifications etc. (not altering text)

**C50** Arts. 18-30 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(a)**

**C51** Arts. 18-30 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(a)**

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*Changes to legislation: There are currently no known outstanding effects for the Health and Safety at Work (Northern Ireland) Order 1978, PART II. (See end of Document for details)*

## [<sup>F91</sup>[<sup>F92</sup>Information communicated by Commissioners for Revenue and Customs]

<sup>F93</sup><sup>F94</sup>**29A.**—(1) If they think it appropriate to do so for the purpose of facilitating the exercise or performance by any person to whom paragraph (2) applies of any of that person's powers or duties under any of the relevant statutory provisions,[<sup>F92</sup> the Commissioners for Her Majesty's Revenue and Customs] and Excise may authorise the disclosure to that person of any information obtained[<sup>F92</sup> or held] for the purposes of the exercise[<sup>F92</sup> by Her Majesty's Revenue and Customs] of their functions in relation to imports.

(2) This paragraph applies to an enforcing authority and to an inspector.

(3) A disclosure of information made to any person under paragraph (1) shall be made in such manner as may be directed by[<sup>F92</sup> the Commissioners for Her Majesty's Revenue and Customs] and may be made through such persons acting on behalf of that person as may be so directed.

(4) Information may be disclosed to a person under paragraph (1) whether or not the disclosure of the information has been requested by or on behalf of that person.]

**F91** 1987 NI 20

**F92** 2005 c. 11

**F93** mod. by SR 2000/87; 2000/120

**F94** mod. by 2002 c. 8 (NI)

### Modifications etc. (not altering text)

**C52** Arts. 18-30 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(a)**

**C53** Arts. 18-30 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(a)**

## Restrictions on disclosure of information

<sup>F95</sup><sup>F96</sup>**30.**—(1) In this Article—

- (a) “relevant information” means information obtained by a person under Article 29(1) or furnished to any person[<sup>F97</sup> under Article 29A or] in pursuance of a requirement imposed by any of the relevant statutory provisions; and
- (b) “the recipient”, in relation to any relevant information, means the person by whom that information was so obtained or to whom that information was so furnished, as the case may be.

(2) Subject to paragraph (3), no relevant information shall be disclosed without the consent of the person by whom it was furnished.

(3) Paragraph (2) shall not apply to—

- (a) disclosure of information to the[<sup>F98</sup> Executive], a government department or any enforcing authority;
- (b) without prejudice to sub-paragraph ( a), disclosure by the recipient of information to any person for the purpose of any function conferred on the recipient by or under any of the relevant statutory provisions;
- (c) without prejudice to sub-paragraph ( a), disclosure by the recipient of information to—
  - (i) an officer of a district council who is authorised by that council to receive it,
  - (ii) a constable authorised by the Chief Constable to receive it;



- [<sup>F99</sup>(iii) an officer of a water undertaker or sewerage undertaker who is authorised by that undertaker to receive it;]
- (d) disclosure by the recipient of information in a form calculated to prevent it from being identified as relating to a particular person or case;
- (e) disclosure of information for the purposes of any legal proceedings or any investigation or inquiry held by virtue of Article 16(2).
- (4) In paragraph (3) any reference to the [<sup>F98</sup> Executive], a government department or an enforcing authority includes respectively a reference to an officer of that body or authority (including, in the case of an enforcing authority, any inspector appointed by it), and also, in the case of a reference to the [<sup>F98</sup> Executive], includes a reference to—
- (a) a person performing any functions of the [<sup>F98</sup> Executive] on its behalf by virtue of Article 15(1)( a);
- (b) an officer of a body which is so performing any such functions; and
- (c) an adviser appointed in pursuance of Article 15(1)( c).
- (5) A person to whom information is disclosed in pursuance of paragraph (3) shall not use the information for a purpose other than—
- (a) in a case falling within sub-paragraph ( a) of that paragraph, a purpose of the [<sup>F98</sup> Executive] or of the government department in question, or the purposes of the enforcing authority in question in connection with the relevant statutory provisions, as the case may be;
- (b) in the case of information given to an officer of a district council, the purposes of the council in connection with the relevant statutory provisions or any statutory provision relating to public health or public safety;
- (c) in the case of information given to a constable, the purposes of the police in connection with the relevant statutory provisions or any statutory provision relating to public health, public safety or the safety of the State.
- [<sup>F100</sup>(d) in the case of information given to an officer of a water undertaker or sewerage undertaker, the purposes of the undertaker in connection with the relevant statutory provisions or any statutory provision relating to public health, public safety or the protection of the environment.]
- (6) A person shall not disclose any information obtained by him as a result of the exercise of any power conferred by Article 16(4)( a) or 22 (including, in particular, any information with respect to any trade secret obtained by him in any premises entered by him by virtue of any such power) except—
- (a) for the purposes of his functions; or
- (b) for the purposes of any legal proceedings or any investigation or inquiry held by virtue of Article 16(2) or for the purposes of a report of any such proceedings or inquiry or of a special report made by virtue of Article 16(2); or
- (c) with the relevant consent.
- (7) In paragraph (6) “the relevant consent” means, in the case of information furnished in pursuance of a requirement imposed under Article 22, the consent of the person who furnished it, and, in any other case, the consent of a person having responsibilities in relation to the premises where the information was obtained.
- (8) Notwithstanding anything in paragraph (6) an inspector shall, in circumstances in which it is necessary to do so for the purpose of assisting in keeping persons (or the representatives of persons) employed at any premises adequately informed about matters affecting their health, safety

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and welfare, give to such persons or their representatives the following descriptions of information, that is to say—

- (a) factual information obtained by him as mentioned in that paragraph which relates to those premises or anything which was or is therein or was or is being done therein; and
- (b) information with respect to any action which he has taken or proposes to take in or in connection with those premises in the performance of his functions;

and, where an inspector does as aforesaid, he shall give the like information to the employer of the first-mentioned persons.

(9) Notwithstanding anything in paragraph (6), a person who has obtained such information as is referred to in that paragraph may furnish to a person who appears to him to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter, a written statement of relevant facts observed by him in the course of exercising any of the powers referred to in that paragraph.

- F95** mod. by SR 2000/87; 2000/120  
**F96** mod. by 2002 c. 8 (NI)  
**F97** 1987 NI 20  
**F98** 1998 NI 18  
**F99** Art. 30(3)(c)(iii) added (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 13(1)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)  
**F100** Art. 30(5)(d) added (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 13(2)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with art. 3, Sch. 2)

#### **Modifications etc. (not altering text)**

- C54** Arts. 18-30 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(a)**  
**C55** Arts. 18-30 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(a)**  
**C56** Art. 30 applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(f)**  
**C57** Art. 30 applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(f)** (with reg. 3)

### *Provisions as to offences*

#### **Offences**

**F101F102** 31.—(1) Any person who—

- (a) fails to discharge a duty to which he is subject by virtue of Articles 4 to 8;
- (b) contravenes Article 9 or 10;
- (c) contravenes any health and safety regulations or any requirement or prohibition imposed under any such regulations (including any requirement or prohibition to which he is subject by virtue of the terms of or any condition or restriction attached to any licence, approval, exemption or other authority issued, given or granted under the regulations);
- (d) contravenes any requirement imposed by or under regulations under Article 16 or intentionally obstructs any person in the exercise of his powers under that Article;

- (e) contravenes any requirement imposed by an inspector under Article 22 or 27;
- (f) prevents or attempts to prevent any other person from appearing before an inspector or from answering any question to which an inspector may by virtue of Article 22(2) require an answer;
- (g) contravenes any requirement or prohibition imposed by an improvement notice or a prohibition notice (including any such notice as modified on appeal);
- (h) intentionally obstructs an inspector in the exercise or performance of his powers or duties<sup>F103</sup> or obstructs a customs officer in the exercise of his powers under Article 27A];
- (i) contravenes any requirement imposed by a notice under Article 29(1);
- (j) uses or discloses any information in contravention of Article<sup>F104</sup> . . . 30;
- (k) makes a statement which he knows to be false or recklessly makes a statement which is false where the statement is made—
  - (i) in purported compliance with a requirement to furnish any information imposed by or under any of the relevant statutory provisions; or
  - (ii) for the purpose of obtaining the issue of a document under any of the relevant statutory provisions to himself or another person;
- (l) intentionally makes a false entry in any register, book, notice or other document required by or under any of the relevant statutory provisions to be kept, served or given or, with intent to deceive, makes use of any such entry which he knows to be false;
- (m) with intent to deceive,<sup>F105</sup> . . . uses a document issued or authorised to be issued under any of the relevant statutory provisions or required for any purpose thereunder or makes or has in his possession a document so closely resembling any such document as to be calculated to deceive;
- (n) falsely pretends to be an inspector;
- (o) fails to comply with an order made by a court under Article 39;

shall be guilty of an offence.

<sup>F106</sup>(2) Schedule 3A (which specifies the mode of trial and maximum penalty applicable to offences under this Article and the existing statutory provisions) has effect.

(3) Schedule 3A is subject to any provision made by virtue of Article 17(6)(c) or (d).]

*Para.(6) rep. by 1992 NI 17*

*Para.(7) rep. by 1981 c. 45*

**F101** mod. by SR 2000/87; 2000/120

**F102** mod. by 2002 c. 8 (NI)

**F103** 1987 NI 20

**F104** 1988 NI 3

**F105** 1986 NI 15

**F106** Art. 31(2)(3) substituted (16.1.2009) for art. 31(1A)-(5) by [Health and Safety \(Offences\) Act 2008](#) (c. 20), **ss. 1(3), 3(2)** (with s. 3(3))

**Modifications etc. (not altering text)**

**C58** Art. 31 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006](#) (S.I. 2006/397), **reg. 35**

**C59** Arts. 31-39 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009](#) (S.R. 2009/238), **reg. 14(1)(b)**

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*Changes to legislation: There are currently no known outstanding effects for the Health and Safety at Work (Northern Ireland) Order 1978, PART II. (See end of Document for details)*

- C60** Arts. 31-39 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(b)**
- C61** Arts. 31-39 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(b)** (with regs. 3, 8-15, 19, 20, 21)
- C62** Art. 31(1)(c) applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**
- C63** Art. 31(1)(c)(e)-(h)(j)-(o) applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(g)** (with reg. 3)
- C64** Art. 31(1)(e)-(h) applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**
- C65** Art. 31(1)(j)-(o) applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**
- C66** Art. 31(2) applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**

### Extension of time for bringing summary proceedings

<sup>F107F108</sup>**32.**—(1) Where—

- (a) a special report on any matter to which Article 16 applies is made under paragraph (2)(a) of that Article; or
- (b) a report is made by the person holding an inquiry into any such matter under paragraph (2)(b) of that Article; or
- (c) a coroner's inquest is held touching the death of any person whose death may have been caused by an accident which happened while he was at work or by a disease which he contracted or probably contracted at work or by any accident, act or omission which occurred in connection with the work of any person whatsoever;

and it appears from the report or, in a case falling within sub-paragraph (c), from the proceedings at the inquest, that any of the relevant statutory provisions was contravened at a time which is material in relation to the subject-matter of the report or inquest, summary proceedings against any person liable to be proceeded against in respect of the contravention may be commenced at any time within three months of the making of the report or, in a case falling within sub-paragraph (c), within three months of the conclusion of the inquest.

(2) Where an offence under any of the relevant statutory provisions is committed by reason of a failure to do something at or within a time fixed by or under any of those provisions, the offence shall be deemed to continue until that thing is done.

(3) Summary proceedings for an offence to which this paragraph applies may be commenced at any time within<sup>F109</sup> six months from the date on which there comes to the knowledge of a responsible enforcing authority evidence sufficient in the opinion of that authority to justify a prosecution for that offence; and for the purposes of this paragraph—

- (a) a certificate of an enforcing authority stating that such evidence came to its knowledge on a specified date shall be conclusive evidence of that fact; and
- (b) a document purporting to be such a certificate and to be signed by or on behalf of the enforcing authority in question shall be presumed to be such a certificate unless the contrary is proved.

(4) Paragraph (3) applies to any offence under any of the relevant statutory provisions which a person commits under any provision or requirement to which he is subject as the designer, manufacturer, importer or supplier of any thing; and in that paragraph “responsible enforcing authority” means an enforcing authority within whose field of responsibility the offence in question lies, whether under Article 33 or otherwise.

**F107** mod. by SR 2000/87; 2000/120

**F108** mod. by 2002 c. 8 (NI)

**F109** mod. by SI 1992/711

#### Modifications etc. (not altering text)

**C61** Arts. 31-39 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(b)** (with regs. 3, 8-15, 19, 20, 21)

**C67** Arts. 32 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**

**C68** Arts. 31-39 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(b)**

**C69** Arts. 31-39 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(b)**

**C70** Art. 32(1)(c)(d) applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by virtue of [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**

**C71** Art. 32(2) applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**

**C72** Art. 32(2)-(4) applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(g)** (with reg. 3)

## Venue

<sup>F110F111</sup>**33.** An offence under any of the relevant statutory provisions committed in connection with any plant or substance may, if necessary for the purpose of bringing the offence within the field of responsibility of any enforcing authority or conferring jurisdiction on any court to entertain proceedings for the offence, be treated as having been committed at the place where that plant or substance is for the time being.

**F110** mod. by SR 2000/87; 2000/120

**F111** mod. by 2002 c. 8 (NI)

#### Modifications etc. (not altering text)

**C61** Arts. 31-39 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(b)** (with regs. 3, 8-15, 19, 20, 21)

**C73** Art. 33 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**

**C74** Arts. 31-39 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(b)**

**C75** Arts. 31-39 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(b)**

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Safety at Work (Northern Ireland) Order 1978, PART II. (See end of Document for details)*

**C76** Art. 33 applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**

### Offences due to fault of other person

<sup>F112F113</sup>**34.**—(1) Where the commission by any person of an offence under any of the relevant statutory provisions is due to the act or default of some other person, that other person shall be guilty of an offence, and a person may be charged with and convicted of the offence under this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where there would be or have been the commission of an offence under Article 31 by the Crown but for the circumstance that that Article does not bind the Crown, and that fact is due to the act or default of a person other than the Crown, that person shall be guilty of the offence which, but for that circumstance, the Crown would be committing or would have committed, and may be charged with and convicted of that offence accordingly.

(3) The provisions of this Article are subject to any provision made under Article 17(6).

**F112** mod. by SR 2000/87; 2000/120

**F113** mod. by 2002 c. 8 (NI)

#### Modifications etc. (not altering text)

**C61** Arts. 31-39 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(b)** (with regs. 3, 8-15, 19, 20, 21)

**C77** Art. 34 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**

**C78** Arts. 31-39 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(b)**

**C79** Arts. 31-39 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(b)**

**C80** Arts. 34-38 applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**

**C81** Art. 34(1) applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**

**C82** Art. 34(1)(2) applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(g)** (with reg. 3)

**C83** Art. 34(2) applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**

### [<sup>F114</sup>Offences by bodies corporate

<sup>F115F116</sup>**34A.** For the purposes of this Part section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.]

F114 1998 NI 18

F115 mod. by SR 2000/87; 2000/120

F116 mod. by 2002 c. 8 (NI)

**Modifications etc. (not altering text)**

- C61 Arts. 31-39 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(b)** (with regs. 3, 8-15, 19, 20, 21)
- C84 Art. 34A applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**
- C85 Arts. 31-39 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(b)**
- C86 Arts. 31-39 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(b)**
- C87 Arts. 34-38 applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**
- C88 Art. 34A applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(g)** (with reg. 3)

**Restriction on institution of proceedings**

<sup>F117F118</sup>**35.** Proceedings for an offence under any of the relevant statutory provisions shall not be instituted except by an inspector or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

F117 mod. by SR 2000/87; 2000/120

F118 mod. by 2002 c. 8 (NI)

**Modifications etc. (not altering text)**

- C61 Arts. 31-39 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(b)** (with regs. 3, 8-15, 19, 20, 21)
- C89 Art. 35 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**
- C90 Arts. 31-39 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(b)**
- C91 Arts. 31-39 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(b)**
- C92 Arts. 34-38 applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**
- C93 Art. 35 applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(g)** (with reg. 3)

**Prosecutions by inspectors**

<sup>F119F120</sup>**36.** An inspector, if authorised in that behalf by the enforcing authority which appointed him, may, although not of counsel or a solicitor, prosecute before a court of summary jurisdiction proceedings for an offence under any of the relevant statutory provisions.

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Safety at Work (Northern Ireland) Order 1978, PART II. (See end of Document for details)*

**F119** mod. by SR 2000/87; 2000/120

**F120** mod. by 2002 c. 8 (NI)

**Modifications etc. (not altering text)**

- C61** Arts. 31-39 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(b)** (with regs. 3, 8-15, 19, 20, 21)
- C94** Art. 36 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**
- C95** Arts. 31-39 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(b)**
- C96** Arts. 31-39 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(b)**
- C97** Arts. 34-38 applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**
- C98** Art. 36 applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(g)** (with reg. 3)

**Onus of proving limits of what is practicable etc.**

<sup>F121F122</sup>**37.** In any proceedings for an offence under any of the relevant statutory provisions consisting of a failure to comply with a duty or requirement to do something so far as is practicable or so far as is reasonably practicable, it shall be for the accused to prove (as the case may be) that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement.

**F121** mod. by SR 2000/87; 2000/120

**F122** mod. by 2002 c. 8 (NI)

**Modifications etc. (not altering text)**

- C61** Arts. 31-39 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(b)** (with regs. 3, 8-15, 19, 20, 21)
- C99** Arts. 37 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**
- C100** Arts. 31-39 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(b)**
- C101** Arts. 31-39 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(b)**
- C102** Arts. 34-38 applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**
- C103** Art. 37 applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(g)** (with reg. 3)

**Evidence**

<sup>F123F124</sup>**38.**—(1) Where an entry is required by any of the relevant statutory provisions to be made in any register or other record, the entry, if made, shall, as against the person by or on whose behalf it was made, be admissible as evidence.



(2) Where an entry which is so required to be so made with respect to the observance of any of the relevant statutory provisions has not been made, that fact shall be admissible as evidence.

**F123** mod. by SR 2000/87; 2000/120

**F124** mod. by 2002 c. 8 (NI)

**Modifications etc. (not altering text)**

**C61** Arts. 31-39 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(b)** (with regs. 3, 8-15, 19, 20, 21)

**C104** Art. 38 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**

**C105** Arts. 31-39 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(b)**

**C106** Arts. 31-39 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(b)**

**C107** Arts. 34-38 applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**

**C108** Art. 38 applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(g)** (with reg. 3)

**Power of court to order cause of offence to be remedied and, in certain cases, forfeiture**

<sup>F125F126</sup>**39.**—(1) Where a person is convicted of an offence under any of the relevant statutory provisions in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matters.

(2) The time fixed by an order under paragraph (1) may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) to remedy any matters, that person shall not be liable under any of the relevant statutory provisions in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under paragraph (2).

[<sup>F127</sup>(3A) Paragraph (4) applies where a person is convicted of an offence consisting of acquiring or attempting to acquire, possessing or using an explosive article or substance (within the meaning of any of the relevant statutory provisions) in contravention of any of the relevant statutory provisions.]

(4) Subject to paragraph (5), the court by or before which [<sup>F128</sup> the person is convicted of the offence] may order the article or substance in question to be forfeited and either destroyed or dealt with in such other manner as the court may order.

(5) The court shall not order anything to be forfeited under paragraph (4) where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

**F125** mod. by SR 2000/87; 2000/120

**F126** mod. by 2002 c. 8 (NI)

**F127** [Art. 39\(3A\)](#) inserted (16.1.2009) by [Health and Safety \(Offences\) Act 2008 \(c. 20\)](#), ss. 2, 3(2), **Sch. 3 para. 3(2)** (with s. 3(3))

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Safety at Work (Northern Ireland) Order 1978, PART II. (See end of Document for details)*

**F128** Words in art. 39(4) substituted (16.1.2009) by [Health and Safety \(Offences\) Act 2008 \(c. 20\)](#), ss. 2, 3(2), **Sch. 3 para. 3(3)** (with s. 3(3))

#### **Modifications etc. (not altering text)**

- C61** Arts. 31-39 applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(b)** (with regs. 3, 8-15, 19, 20, 21)
- C109** Art. 39 applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**
- C110** Arts. 31-39 applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(b)**
- C111** Arts. 31-39 applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(b)**
- C112** Art. 39(1)-(3) applied (with modifications) (10.5.2010 with effect as mentioned in reg. 41 of the amending Regulations) by [Train Driving Licences and Certificates Regulations \(Northern Ireland\) 2010 \(S.R. 2010/132\)](#), regs. 1(2), **40(2)(3)(g)**
- C113** Art. 39(1)-(3) applied (with modifications) (16.1.2012) by [Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), **reg. 40(2)(3)(g)** (with reg. 3)

### *Financial provisions*

#### **Financial provisions**

**40** <sup>F129</sup>.—<sup>F130</sup>(1) The Department shall pay to the<sup>[F131 Executive]</sup> such sums as the Department, with the approval of the Department of Finance may determine are appropriate for the purpose of enabling the<sup>[F131 Executive]</sup> to perform its functions.

(2) Regulations may provide for such fees as may be fixed by or determined under the regulations to be payable for or in connection with the performance by or on behalf of any authority to which this paragraph applies of any function conferred on that authority by or under any of the relevant statutory provisions.

(3) Paragraph (2) applies to the following authorities, namely the<sup>[F131 Executive]</sup>, the Department concerned, every enforcing authority, and any other person on whom any function is conferred by or under any of the relevant statutory provisions.

(4) Regulations under this Article may specify the person by whom any fee payable under the regulations is to be paid; but no such fee shall be made payable by a person in any of the following capacities, namely an employee, a person seeking employment, a person training for employment, and a person seeking training for employment.

(5) In paragraph (4) the references to a person training for employment and a person seeking training for employment shall include respectively a person attending an industrial rehabilitation course provided under the Disabled Persons (Employment) Act (Northern Ireland) 1945 and a person seeking to attend such a course.

(6) For the purposes of this Article the performance by an inspector of his functions shall be treated as the performance by the enforcing authority which appointed him of functions conferred on that authority by or under any of the relevant statutory provisions.

**F129** mod. by SR 2000/87; 2000/120

**F130** mod. by 2002 c. 8 (NI)

**F131** 1998 NI 18

*Miscellaneous and supplementary*

**Representations in connection with licensing provisions in the relevant statutory provisions**

**41**<sup>F132</sup>.—<sup>F133</sup>(1) Any person who is aggrieved by a decision of an authority having power to issue licences (other than nuclear site licences) under any of the relevant statutory provisions—

- (a) refusing to issue him a licence, to renew a licence held by him, or to transfer to him a licence held by another;
- (b) issuing him a licence on or subject to any term, condition or restriction whereby he is aggrieved;
- (c) varying or refusing to vary any term, condition or restriction on or subject to which a licence is held by him; or
- (d) revoking a licence held by him,

may make representations to the Department concerned in accordance with the provisions<sup>F134</sup> prescribed by order under Article 10 of the Deregulation and Contracting Out (Northern Ireland) Order 1996 (model provisions with respect to appeals)].

(2) In this Article—

“licence” means a licence under any of the relevant statutory provisions other than a nuclear site licence;

“nuclear site licence” means a licence to use a site for the purposes of installing or operating a nuclear installation within the meaning of paragraph (3).

(3) For the purposes of paragraph (2) “nuclear installation” means—

- (a) a nuclear reactor (other than such a reactor comprised in a means of transport, whether by land, water or air); or
- (b) any other installation of such class or description as may be prescribed for the purposes of this sub-paragraph or section 1(1)( b) of the Nuclear Installations Act 1965 , being an installation designed or adapted for—
  - (i) the production or use of atomic energy; or
  - (ii) the carrying out of any process which is preparatory or ancillary to the production or use of atomic energy and which involves or is capable of causing the emission of ionising radiations; or
  - (iii) the storage, processing or disposal of nuclear fuel or of bulk quantities of other radioactive matter, being matter which has been produced or irradiated in the course of the production or use of nuclear fuel;

and in this paragraph—

“atomic energy” has the meaning assigned by the Atomic Energy Act 1946 ;

“nuclear reactor” means any plant (including any machinery, equipment or appliance, whether affixed to land or not) designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons.

**F132** mod. by SR 2000/87; 2000/120

**F133** mod. by 2002 c. 8 (NI)

**F134** 1998 NI 18

**Default powers**

**42** <sup>F135</sup>.—<sup>F136</sup>(1) The Department concerned may cause such local or other inquiries to be held as that Department thinks expedient in connection with any matter relating to the enforcement functions of an enforcing authority under this Order.

(2) If the Department concerned is satisfied, after having caused a local inquiry to be held into the matter, that an enforcing authority has failed to perform any of its enforcement functions, that Department may by order empower an officer of that Department to exercise, or procure the exercise of, that function.

(3) Where any expenses are incurred by the Department concerned or by an officer of the Department concerned under any order under paragraph (2)—

- (a) the amount of those expenses as certified by that Department shall, on demand, be paid to that Department by the enforcing authority concerned;
- (b) any sum demanded under sub-paragraph (a)—
  - (i) shall be recoverable by that Department from that authority as a civil debt due to the Crown; or
  - (ii) may be deducted from any sums payable by a Northern Ireland Department to the enforcing authority concerned.

**F135** mod. by SR 2000/87; 2000/120

**F136** mod. by 2002 c. 8 (NI)

**Civil liability**

<sup>F137</sup>**43** .—<sup>F138</sup>(1) Nothing in this Part shall be construed—

- (a) as conferring a right of action in any civil proceedings in respect of any failure to comply with any duty imposed by Articles 4 to 8 or any contravention of Article 9; or
- (b) as affecting the extent (if any) to which breach of a duty imposed by any of the existing statutory provisions is actionable; or
- (c) as affecting the operation of section 12 of the Nuclear Installations Act 1965 (right to compensation by virtue of certain provisions of that Act).

(2) Breach of a duty imposed by health and safety regulations shall, so far as it causes damage, be actionable except in so far as the regulations provide otherwise.

(3) No provision made under Article 17(6)(b) shall afford a defence in any civil proceedings, whether brought under paragraph (2) or not; but as regards any duty imposed as mentioned in paragraph (2) health and safety regulations may provide for any defence specified in the regulations to be available in any action for breach of that duty.

(4) Paragraphs (1)(a) and (2) are without prejudice to any right of action which exists apart from the provisions of this Order, and paragraph (3) is without prejudice to any defence which may be available apart from the provisions of the regulations there mentioned.

(5) Any term of an agreement which purports to exclude or restrict the operation of paragraph (2), or any liability arising by virtue of that paragraph shall be void, except in so far as health and safety regulations provide otherwise.

(6) In this Article “damage” includes the death of, or injury to, any person (including any disease and any impairment of a person's physical or mental condition).

**F137** mod. by SR 2000/87; 2000/120

**F138** mod. by 2002 c. 8 (NI)

**Modifications etc. (not altering text)**

- C114** Art. 43(2) applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(c)**
- C115** Art. 43(2) applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(c)**
- C116** Art. 43(2) applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), **regs. 2(1), 7(1)(c)** (with [regs. 3, 8-15, 19, 20, 21](#))

**Application to Crown**

**44** <sup>F139</sup>.—<sup>F140</sup>(1) Subject to the provisions of this Article, the provisions of this Part, except Articles 23 to 27 and 31 to 39, and of regulations made under this Part shall bind the Crown.

(2) Although they do not bind the Crown, Articles 31 to 39 shall apply to persons in the public service of the Crown as they apply to other persons.

(3) For the purposes of this Part and regulations made thereunder persons in the service of the Crown shall be treated as employees of the Crown whether or not they would be so treated apart from this paragraph.

(4) Without prejudice to Article 17(5), the Secretary of State may, to the extent that it appears to him requisite or expedient to do so in the interests of the safety of the State or the safe custody of persons lawfully detained, by order exempt the Crown either generally or in particular respects from all or any of the provisions of this Part which would, by virtue of paragraph (1), bind the Crown.

(5) An order under paragraph (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

**F139** mod. by SR 2000/87; 2000/120

**F140** mod. by [2002 c. 8 \(NI\)](#)

**Modifications etc. (not altering text)**

- C117** Art. 44(1) applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**
- C118** Art. 44(2) applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**
- C119** Art. 44(3) applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**

**Adaptation of enactments to metric units or appropriate metric units**

**45** <sup>F141</sup>.—<sup>F142</sup>(1) Regulations may amend—

- (a) any of the relevant statutory provisions; or
- (b) any provision of a statutory provision which relates to any matter relevant to any of the general purposes of this Part but is not among the relevant statutory provisions;

by substituting an amount or quantity expressed in metric units for an amount or quantity not so expressed or by substituting an amount or quantity expressed in metric units of a description specified in the regulations for an amount or quantity expressed in metric units of a different description.

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Safety at Work (Northern Ireland) Order 1978, PART II. (See end of Document for details)*

(2) The amendments shall be such as to preserve the effect of the provisions mentioned except to such extent as in the opinion of the Department concerned is necessary to obtain amounts expressed in convenient and suitable terms.

(3) Regulations may, in the case of a provision which falls within paragraph (1) and contains words which refer to units other than metric units, repeal those words if the Department concerned is of the opinion that those words could be omitted without altering the effect of that provision.

**F141** mod. by SR 2000/87; 2000/120

**F142** mod. by [2002 c. 8 \(NI\)](#)

### Regulations under the relevant statutory provisions

**46** <sup>F143</sup>.—<sup>F144</sup>(1) Where any power to make regulations under any of the relevant statutory provisions is exercisable by the Department concerned that power may be exercised either so as to give effect (with or without modifications) to<sup>F145</sup> proposals] submitted by the<sup>F145</sup> Executive] under Article 13<sup>F145</sup> (1A)( c)] or independently of any such<sup>F145</sup> proposals]; but the Department concerned shall not exercise that power independently of such<sup>F145</sup> proposals] unless that Department has consulted the<sup>F145</sup> Executive] and such other bodies as appear to that Department to be appropriate.

(2) Where the Department concerned proposes to exercise any such power as is mentioned in paragraph (1) so as to give effect to any such<sup>F145</sup> proposals] as are there mentioned with modifications, that Department shall, before making the regulations, consult the<sup>F145</sup> Executive].

(3) Where the<sup>F145</sup> Executive] proposes to submit under Article 13<sup>F145</sup> (1A)( c)] any such<sup>F145</sup> proposals] as are mentioned in paragraph (1) except<sup>F145</sup> proposals] for the making of regulations under Article 40(2), it shall, before so submitting them, consult—

- (a) any government department or other body that appears to the<sup>F145</sup> Executive] to be appropriate (and, in particular, in the case of proposals for the making of regulations under Article 20(2), any body representing district councils that so appears, and, in the case of proposals for the making of regulations relating to electro-magnetic radiations, the Department of Health and Social Services <sup>F146</sup>...);
- (b) such government departments and other bodies, if any, as, in relation to any matter dealt with in the proposals, the<sup>F145</sup> Executive] is required to consult, under this paragraph by virtue of directions given to it by the Department.

**F143** mod. by SR 2000/87; 2000/120

**F144** mod. by [2002 c. 8 \(NI\)](#)

**F145** [1998 NI 18](#)

**F146** Words in art. 46(3)(a) omitted (1.4.2013) by virtue of [The National Treatment Agency \(Abolition\) and the Health and Social Care Act 2012 \(Consequential, Transitional and Saving Provisions\) Order 2013 \(S.I. 2013/235\)](#), art. 1(2), [Sch. 2 para. 7\(3\)](#)

### Exclusion of application to domestic employment

**47** <sup>F147</sup>. <sup>F148</sup>Nothing in this Part shall apply in relation to a person by reason only that he employs another, or is himself employed, as a domestic servant in a private household.

**F147** mod. by SR 2000/87; 2000/120

**F148** mod. by [2002 c. 8 \(NI\)](#)

## Application of Part to police

**47A** <sup>F149</sup>.—<sup>F150</sup>(1) For the purposes of this Part, a person who, otherwise than under a contract of employment, holds the office of constable shall be treated as an employee of the relevant officer.

(2) In this Article “the relevant officer”

[<sup>F151</sup>(a) in relation to a police officer, means the Chief Constable;]

(b) <sup>F152</sup> . . . . .

(c) in relation to any other person holding the office of constable, means the person who has the direction and control of the body of constables in question.

[<sup>F153</sup>(2A) For the purposes of this Part, the relevant officer, as defined by paragraph (2)(a) or (c), shall be treated as a corporation sole.

(2B) Where, in a case in which the relevant officer, as so defined, is guilty of an offence by virtue of this Article, it is proved—

- (a) that the officer-holder personally consented to the commission of the offence,
- (b) that he personally connived in its commission, or
- (c) that the commission of the offence was attributable to personal neglect on his part,

the office-holder (as well as the corporation sole) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2C) In paragraph (2B) “the office-holder”, in relation to the relevant officer, means an individual who, at the time of the consent, connivance or neglect—

- (a) held the office or other position mentioned in paragraph (2) as the office or position of that officer; or
- (b) was for the time being responsible for exercising and performing the powers and duties of that office or position.

(2D) The provisions mentioned in paragraph (2E) (which impose the same liability for unlawful conduct of constables on persons having their direction or control as would arise if the constables were employees of those persons) do not apply to any liability by virtue of this Part.

(2E) Those provisions are—

- (a) paragraph 7(1) of Schedule 8 to the Police Act 1997;
- (b) section 27(8) of the Police (Northern Ireland) Act 1998;
- (c) section 29(1) of that Act;
- (d) section 28 of the Serious Organised Crime and Police Act 2005.]

(3) For the purposes of regulations under Article 4(4) the Police Association for Northern Ireland shall be treated as a recognised trade union recognised by the Chief Constable<sup>F154</sup> . . . .

(4) Regulations under Article 4(4) may provide, in relation to persons falling within paragraph (2) (b) or (c), that a body specified in the regulations is to be treated as a recognised trade union recognised by such person as may be specified.

**F149** mod. by SR 2000/87; 2000/120  
**F150** mod. by 2002 c. 8 (NI)  
**F151** 2000 c. 32  
**F152** Art. 47A(2)(b) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 174(2), 178(8), Sch. 4 para. 39, Sch. 17 Pt. 2; S.I. 2006/378, art. 4(1), Sch. paras. 10, 12, 13(o) (subject to art. 4(1)-(7))

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**Changes to legislation:** There are currently no known outstanding effects for the Health and Safety at Work (Northern Ireland) Order 1978, PART II. (See end of Document for details)

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**F153** Art. 47A(2A)-(2E) inserted (25.7.2006) by Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33), **ss. 27(1), 31(1)(f)** (with s. 27(4)-(6))

**F154** 2000 c. 32



**Status:**

Point in time view as at 01/09/2013.

**Changes to legislation:**

There are currently no known outstanding effects for the Health and Safety at Work (Northern Ireland) Order 1978, PART II.