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STATUTORY INSTRUMENTS

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**1993 No. 1578**

**The Fire Services (Amendment) (Northern Ireland) Order 1993**

**Title and commencement**

1.—(1) This Order may be cited as the Fire Services (Amendment) (Northern Ireland) Order 1993.

(2) Subject to paragraph (3), this Order shall come into operation on the expiration of 2 months from the day on which it is made.

(3) Article 13 shall come into operation on such day as the Head of the Department may by order appoint.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954(1) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Department” means the Department of the Environment;

“the principal Order” means the Fire Services (Northern Ireland) Order 1984(2).

(3) Expressions used in this Order and in the principal Order have the same meaning in this Order as in that Order.

**Accounts of the Fire Authority**

3. In Article 12 of the principal Order (accounts)—

(a) in paragraph (2)(b)—

(i) after “of accounts” there shall be inserted “together with a copy of any report of the officer appointed under this sub-paragraph”;

(ii) for “it” there shall be substituted “them”;

(b) in paragraph (2)(c)—

(i) after “accounts” there shall be inserted “and any report of the officer appointed under sub-paragraph (b)”;

(ii) for “it” there shall be substituted “them”.

**Annual report of the Fire Authority**

4. In Article 16(1) of the principal Order (annual report) the words from “but in any case” onwards shall be omitted.

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(1) 1954 c. 33 (N.I.)

(2) 1984 NI 11

### Interpretation of Part III of principal Order

5. In Article 21 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “designated use” there shall be inserted—

““escape”, in relation to premises, means escape from them to some place of safety beyond the building which constitutes or comprises the premises and any area enclosed by it or enclosed with it.”;

(ii) after the definition of “premises” there shall be inserted—

““prohibition notice” means a notice under Article 33(2);”;

(b) for paragraph (2) there shall be substituted—

“(2) For the purposes of any provision of this Part relating to means of escape, consideration may be given to, and conditions or requirements imposed as respects, any place or thing by means of which a person escapes from premises to a place of safety; and “means of escape” shall be construed accordingly.”.

### Power to exempt from requirement to have fire certificate

6.—(1) In Article 22 of the principal Order (designated uses requiring cover by fire certificates)—

(a) after paragraph (3) there shall be inserted—

“(3A) An order under this Article may, as respects any designated use, specify descriptions of premises which qualify for exemption by the Authority under Article 26A from the requirement for a fire certificate in respect of premises which are put to that use.”; and

(b) in paragraph (4) (methods of description), after “paragraph (3)” there shall be inserted “or (3A)”, and after “use for any purpose” there shall be inserted “or their situation, construction or arrangement”.

(2) In Article 26(3) of the principal Order (duty of Authority to inspect premises on application for fire certificate) after “duty of the Authority” there shall be inserted “to consider whether or not, in the case of premises which qualify for exemption under Article 26A, to grant exemption and, if the Authority does not grant it, it shall be the duty of the Authority”.

(3) After Article 26 of the principal Order there shall be inserted—

#### “Powers for the Authority to grant exemption in particular cases

**26A.**—(1) The Authority may, if it thinks fit as regards any premises which appear to the Authority to be premises qualifying for exemption under this Article as respects any particular use, grant exemption from the requirement to have a fire certificate covering that use.

(2) Exemption under this Article for any premises as respects any use of them may be granted by the Authority, with or without the making of an application for the purpose,—

(a) on the making of an application for a fire certificate with respect to the premises covering that use; or

(b) at any time during the currency of a fire certificate with respect to the premises which covers that use.

(3) In deciding whether or not to grant exemption under this Article for any premises the Authority shall have regard to all the circumstances of the case and in particular to the degree of seriousness of the risk in case of fire to persons in the premises.

(4) For the purpose of making that decision the Authority may—

- (a) require the applicant or, as the case may be, the occupier of the premises to give such information as it requires about the premises and any matter connected with them; and
- (b) cause to be carried out an inspection of the relevant building.

(5) The Authority shall not grant exemption under this Article for any premises without causing an inspection to be carried out under paragraph (4) unless the Authority has caused the premises to be inspected (under that or any other power) within the preceding 12 months.

(6) The effect of the grant of exemption under this Article as respects any particular use of premises is that, during the currency of the exemption, no fire certificate in respect of the premises is required to cover that use and accordingly—

- (a) where the grant is made on an application for a fire certificate, the grant disposes of the application or of so much of it as relates to that use; and
- (b) where the grant is made during the currency of a fire certificate, the certificate shall wholly or as respects that use cease to have effect.

(7) On granting an exemption under this Article, the Authority shall, by notice to the applicant for the fire certificate or the occupier of the premises, as the case may be, inform him that the Authority has granted exemption as respects the particular use or uses of the premises specified in the notice and of the effect of the grant.

(8) A notice of the grant of exemption for any premises as respects a particular use of them may include a statement specifying the greatest number of persons of a description specified in the statement for the purposes of that use who, in the opinion of the Authority, can safely be in the premises at any one time.

(9) Where a notice of the grant of exemption for any premises includes a statement under paragraph (8), the Authority may, by notice served on the occupier of the premises, direct that, as from a date specified in the notice, the statement—

- (a) is cancelled; or
- (b) is to have effect as varied by the notice;

and, on such a variation the statement shall be treated, so long as the variation remains in force, as if the variation were specified in it.

### **Withdrawal of exemptions under Article 26A**

**26B.**—(1) Where the Authority has granted an exemption under Article 26A from the requirement to have a fire certificate covering any particular use of premises the Authority may, if it thinks fit, at any time, withdraw the exemption in accordance with paragraphs (2) to (4).

(2) In deciding whether or not to withdraw an exemption, the Authority shall have regard to all the circumstances of the case and in particular to the degree of seriousness of the risk in case of fire to persons in the premises.

(3) The Authority may withdraw an exemption as respects any particular use of premises without exercising any of the powers of inspection or inquiry conferred by Article 40 but the Authority shall not withdraw the exemption without first giving notice to the occupier of the premises that the Authority proposes to withdraw it and the reasons for the proposal and giving him an opportunity of making representations on the matter.

(4) An exemption shall be withdrawn by serving a notice on the occupier of the premises to which the exemption relates stating that the exemption will cease to have effect as respects the particular use or uses of the premises specified in the notice on such date as is so specified, being a date not earlier than the end of the period of 14 days beginning with the date on which service of the notice is effected.

(5) If premises cease to qualify for exemption under Article 26A the Authority if it has granted an exemption under that Article shall notify the occupier of the premises of the fact and date of the cessation of the exemption.”.

**Exemption from requirement to have fire certificate: supplementary**

7.—(1) After Article 29 of the principal Order there shall be inserted—

**“Change of conditions affecting premises for which exemption has been granted**

**29A.**—(1) If, during the currency of an exemption granted under Article 26A for any premises, it is intended to carry out in relation to those premises any proposals to which this Article applies, the occupier shall, before the carrying out of the proposals is begun, give notice of the proposals to the Authority; and if the carrying out of the proposals is begun without such notice having been given, the occupier shall be guilty of an offence.

(2) This Article applies to the following proposals, namely, any proposal—

(a) to make—

(i) an extension of, or structural alteration to, the premises which would affect the means of escape from the premises; or

(ii) an alteration in the internal arrangement of the premises, or in the furniture or equipment with which the premises are provided, which would affect the means of escape from the premises; or

(b) on the part of the occupier, to begin to keep explosive or highly flammable materials of any prescribed kind anywhere under, in or on the building which constitutes or comprises the premises in a quantity or aggregate quantity greater than the quantity prescribed for the purposes of this paragraph as the maximum in relation to materials of that kind; or

(c) in a case where the notice of exemption under Article 26A includes a statement under paragraph (8) of that Article, to make such a use of the premises as will involve there being in the premises at any one time a greater number of persons in relation to whom the statement applies than is specified or treated as specified in the statement.

(3) A person guilty of an offence under paragraph (1) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or both.”.

(2) After Article 40(2)(a) of the principal Order (premises within powers of inspection, etc., of authorised members of the fire brigade), there shall be inserted—

“(aa) any premises in respect of which there is in force an exemption under Article 26A from the requirement for a fire certificate with respect to them;”.

**Charges for fire certification work**

8. After the Article 29A of the principal Order inserted by Article 7 there shall be inserted—

**“Charges for issue or amendment of fire certificates**

**29B.**—(1) Where the Authority—

(a) issues a fire certificate under Article 26, or

(b) except in a case falling within paragraph (2), amends a fire certificate or, as an alternative to amendment, issues a new fire certificate, under Article 29, the applicant for the certificate or, as the case may be, the occupier of the premises to which the amended or new certificate relates shall pay to the Authority such fee as the Authority determines.

(2) No fee shall be chargeable for the amendment of a fire certificate, or issue of a new fire certificate embodying amendments, under Article 29(8) in a case where the amendment or amendments is or are made in consequence of the coming into operation of regulations under Article 34.

(3) A fee charged by the Authority under this Article in connection with the issue of a fire certificate or the amendment of a, or issue of a new, fire certificate shall not exceed an amount which represents the cost to the Authority of the work reasonably done by the Authority for the purposes of the issue of the certificate or, as the case may be, the amendment of the certificate or issue of the new certificate, other than the cost of any inspection of the premises.”.

### **General duty as to means of escape and for fighting fire; codes of practice and improvement notices**

9.—(1) For Article 31 of the principal Order (duty to provide certain premises with means of escape in case of fire) there shall be substituted—

#### **“Duty as to means of escape and for fighting fire**

31.—(1) All premises to which this Article applies shall be provided with—

- (a) such means of escape in case of fire, and
- (b) such means for fighting fire,

as may reasonably be required in the circumstances of the case.

(2) The premises to which this Article applies are premises which are exempt from the requirement for a fire certificate by virtue of—

- (a) a provision made in an order under Article 22 by virtue of paragraph (3) of that Article, or
- (b) the grant of exemption by the Authority under Article 26A.

(3) In the event of a contravention of the duty imposed by paragraph (1) the occupier of the premises shall, except as provided in paragraph (4), be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person is not guilty of an offence under this Article in respect of any contravention of the duty imposed by paragraph (1) which is the subject of an improvement notice under Article 31C.

#### **Codes of practice as to means of escape and for fighting fire**

31A.—(1) The Department may, after consultation with such persons or bodies of persons as appear to the Department requisite,—

- (a) prepare and issue codes of practice for the purpose of providing practical guidance on how to comply with the duty imposed by Article 31; and
- (b) revise any such code by revoking, varying, amending or adding to the provisions of the code.

(2) A code shall not be issued or revised unless a draft of it has been laid before and approved by a resolution of the Assembly.

(3) In this Order references to a code of practice under this Article are references to such a code as it has effect for the time being, with any revisions, under this Article.

### **Legal effect of codes of practice**

**31B.**—(1) A failure on the part of a person to observe any provision of a code of practice under Article 31A shall not of itself render him liable to any criminal or civil proceedings.

(2) If, in any proceedings whether civil or criminal under this Order, it is alleged that there has been a contravention on the part of any person of the duty imposed by Article 31—

- (a) a failure to observe a provision of a code of practice under Article 31A may be relied on as tending to establish liability, and
- (b) compliance with such a code may be relied on as tending to negative liability.

### **Improvement notices**

**31C.**—(1) Where the Authority is of the opinion that the duty imposed by Article 31 has been contravened in respect of any premises to which that Article applies, the Authority may serve on the occupier of those premises a notice (“an improvement notice”) which—

- (a) states the Authority is of that opinion;
  - (b) specifies, by reference to a code of practice under Article 31A if the Authority thinks fit, what steps the Authority considers are necessary to remedy that contravention; and
  - (c) requires the occupier to take steps to remedy that contravention within such period (ending not earlier than the period within which an appeal against the improvement notice can be brought under Article 31D) as may be specified in the notice.
- (2) Where an improvement notice has been served under paragraph (1)—
- (a) the Authority may withdraw that notice at any time before the end of the period specified in the notice; and
  - (b) if an appeal against the improvement notice is not pending, the Authority may extend or further extend the period specified in the notice.
- (3) Where any premises are premises to which Article 31 applies and—
- (a) the building which constitutes or comprises the premises is a building to which at the time of its erection building regulations imposing requirements as to means of escape in case of fire applied; and
  - (b) in connection with the erection of that building plans were, in accordance with building regulations, deposited with a district council, or former local authority,

the Authority shall not in pursuance of paragraph (1) serve an improvement notice requiring structural or other alterations relating to the means of escape from the premises unless the requirements of paragraph (4) are satisfied in relation to those premises.

(4) The requirements of this paragraph are satisfied in relation to such premises as are mentioned in paragraph (3) if—

- (a) regulations are in operation under Article 34 applying to the premises in relation to any use of them as respects which exemption under Article 26A has been granted, being regulations which impose requirements as to means of escape in case of fire, and the Authority is satisfied that alterations to the building which constitutes or

comprises the premises are necessary to bring the premises into compliance with the regulations in respect of those requirements; or

- (b) the Authority is satisfied that the means of escape in case of fire with which the premises are provided are inadequate in relation to any such use of the premises by reason of matters or circumstances of which particulars were not required by or under the building regulations to be supplied in connection with the deposit of plans.

(5) In this Article “structural or other alterations relating to means of escape from the premises”, in relation to any such premises as are mentioned in this Article, means structural or other alterations directly connected with the provision of the premises with adequate means of escape in case of fire.

### **Rights of appeal against improvement notices**

**31D.**—(1) A person on whom an improvement notice is served may, within 21 days from the date on which the improvement notice is served, appeal to the county court in accordance with county court rules.

(2) On an appeal under this Article, the county court 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 court may in the circumstances think fit.

(3) Where an appeal is brought under this Article against 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.

### **Provision as to offences**

**31E.**—(1) It is an offence for a person to contravene any requirement imposed by an improvement notice.

(2) Any person guilty of an offence under paragraph (1) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine, or imprisonment for a term not exceeding 2 years, or both.”.

(2) In Article 38(1) of the principal Order (Authority to consult other authorities before requiring alterations to buildings), in sub-paragraph (b), after “Article 29(6) or (7)” there shall be inserted “Article 31C” and after the words “would have to be taken” there shall be inserted “or, in the case of a notice under Article 31C, which must be taken”.

### **Duties as regards safety pending determination of applications for fire certificates**

**10.**—(1) Article 26 of the principal Order (applications for fire certificates)—

(a) in paragraph (2), after “the Authority”, there shall be inserted “shall notify the applicant of his duties under paragraph (2A) and”; and

(b) after paragraph (2) there shall be inserted—

“(2A) Where an application is made for a fire certificate with respect to any premises it is the duty of the occupier to secure that, when the application is made and pending its disposal—

- (a) the means of escape in case of fire with which the premises are provided can be safely and effectively used at all material times;
- (b) the means for fighting fire with which the premises are provided are maintained in efficient working order; and

- (c) any persons employed to work in the premises receive instruction or training in what to do in case of fire.”
- (2) In Article 28 of the principal Order (offences)—
  - (a) after paragraph (3), there shall be inserted—

“(3A) If, pending the disposal of an application for a fire certificate with respect to any premises, the premises are put to a designated use, then, if any requirement imposed by Article 26(2A) is contravened by reason of anything done or not done to or in relation to any part of the relevant building, the occupier shall be guilty of an offence.”; and
  - (b) after paragraph (5), there shall be inserted—

“(5A) A person guilty of an offence under paragraph (3A) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.”.

### **Means of escape from fire in hotels and boarding houses**

- 11.** In Article 32(2) of the principal Order (means of escape from fire in hotels and boarding houses)—
- (a) after “issued” there shall be inserted “either”;
  - (b) at the end there shall be inserted “or a letter from an authorised member of the fire brigade stating that the premises afford an adequate means of escape in case of fire and that appropriate means for fighting fire have been provided and have been or will be maintained on those premises, together with, where necessary, appropriate means for giving warning in case of fire.”.

### **Special procedure in case of serious risk: prohibition notices**

- 12.** For Article 33 of the principal Order (court’s power to prohibit or restrict use of certain premises until excessive risk to persons in case of fire is reduced) there shall be substituted—

#### **“Special procedure in case of serious risk: prohibition notices**

- 33.—**(1) This Article applies to—
- (a) any premises which are being or are proposed to be put to a use (whether designated or not) which falls within at least one of the classes of use mentioned in Article 22, other than premises of the description given in Article 23; and
  - (b) any premises to which Article 24 for the time being applies.
- (2) If as regards any premises to which this Article applies the Authority is of the opinion that use of the premises involves or will involve a risk to persons on the premises in case of fire so serious that use of the premises ought to be prohibited or restricted, the Authority may serve on the occupier of the premises a notice (“a prohibition notice”).
- (3) The matters relevant to the assessment by the Authority, for the purposes of paragraph (2), of the risk to persons in case of fire include anything affecting their escape from the premises in that event.
- (4) A prohibition notice shall—
- (a) state that the Authority is of the opinion referred to in paragraph (2);
  - (b) specify the matters which in the opinion of the Authority give or, as the case may be, will give rise to that risk; and



(c) direct that the use to which the prohibition notice relates is prohibited or restricted to such extent as may be specified in the notice until the specified matters have been remedied.

(5) A prohibition notice may include directions as to the steps which will have to be taken to remedy the matters specified in the notice.

(6) A prohibition or restriction contained in a prohibition notice in pursuance of paragraph (4)(c) shall take effect immediately it is served if the Authority is of the opinion, and so states in the notice, that the risk of serious personal injury is or, as the case may be, will be imminent, and in any other case shall take effect at the end of a period specified in the prohibition notice.

(7) Where a prohibition notice has been served under paragraph (2) the Authority may withdraw the notice at any time.

### **Rights of appeal against prohibition notices**

**33A.**—(1) A person on whom a prohibition notice is served may, within 21 days from the date on which the prohibition notice is served, appeal to the county court in accordance with county court rules.

(2) On an appeal under this Article, the county court 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 court may in the circumstances think fit.

(3) Where an appeal is brought under this Article against a prohibition notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice, unless, on the application of the appellant, the court so directs (and then only from the giving of the direction).

### **Provision as to offences**

**33B.**—(1) It shall be an offence for any person to contravene any prohibition or restriction imposed by a prohibition notice.

(2) In any proceedings for an offence under paragraph (1) where the person charged is a person other than the person on whom the prohibition notice was served, it shall be a defence for that person to prove that he did not know and had no reason to believe the notice had been served.

(3) Any person guilty of an offence under paragraph (1) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine, or imprisonment for a term not exceeding 2 years, or both.”.

### **Inspections of premises**

**13.** In Article 39 of the principal Order (enforcement)—

(a) at the beginning there shall be inserted “(1)”; and

(b) at the end there shall be inserted—

“(2) In carrying out the duty so far as it requires premises to be inspected, the Authority shall act in accordance with such guidance as the Department may give it.”.

### **Disclosure of information obtained in premises**

14. In Article 41 of the principal Order (restriction on disclosure of information obtained in premises)—

- (a) at the beginning there shall be inserted “(1) Subject to paragraph (2),”; and
- (b) at the end there shall be inserted—

“(2) Nothing in paragraph (1) prohibits the disclosure of information to an enforcing authority within the meaning of the Health and Safety at Work (Northern Ireland) Order 1978 in order to enable that authority to discharge any function falling within its field of responsibility.

(3) The definition of “enforcing authority” in Article 2(2) and Article 2(3) of the Health and Safety at Work (Northern Ireland) Order 1978 (enforcing authority’s “field of responsibility”) shall apply for the purposes of this Article as it applies for the purposes of Part II of that Order.”.

### **Civil and other liability**

15. After Article 44 of the principal Order there shall be inserted—

#### **“Civil and other liability**

44A. Except in so far as this Order otherwise expressly provides, and subject to section 20(1) and (4) of the Interpretation Act (Northern Ireland) 1954 (offences under two or more laws), the provisions of this Order shall not be construed as—

- (a) conferring a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of a provision of this Order, of any regulations thereunder or of any fire certificate or notice issued or served thereunder by the Authority; or
- (b) affecting any requirement or restriction imposed by or under any other statutory provision; or
- (c) derogating from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Order.”.

### **Removal of exemption for premises used for public religious worship**

16. Premises appropriated to, and used solely or mainly for, public religious worship shall cease to be exempt from the requirement for a fire certificate if put to a designated use and accordingly Article 23(a) of the principal Order (exemptions), shall be omitted.

### **Breaches of fire certificate requirements: restriction of defence**

17. In Article 28(5) of the principal Order (offence of contravening fire certificate requirements except where person charged does not know of his responsibility), after the words “A person” there shall be inserted “other than the occupier of the premises”.

### **Automatic means for fighting fire**

18.—(1) In Article 26(3)(c) of the principal Order (the Authority to be satisfied regarding means for fighting fire before issuing a fire certificate with respect to any premises) the words from “for use” to “the building” shall be omitted.

(2) In Article 27(1)(d) of the principal Order (contents of a fire certificate regarding means for fighting fire) the words from “for use” to “the building” shall be omitted.

#### **Extension of power to apply Order**

19. In Article 48 of the principal Order (power for Department to apply Order to vessels and movable structures) at the end there shall be added

“; and

(c) places of work in the open air of any prescribed description.”.

#### **Application to Crown, etc.**

20. In Article 49 of the principal Order (application of Order to Crown, etc.)—

(a) in paragraph (1)(a) (provisions applying to premises occupied by the Crown) after “25” there shall be inserted “26(2A), 26A, 26B,” and for “31 (except paragraph (4))” there shall be substituted “31 (except paragraphs (3) and (4)), 31A and 31B”;

(b) in paragraph (1)(b) (provisions applying to premises owned but not occupied by the Crown), after “29” there shall be inserted “29A, 29B,”.

#### **Functions of the Department**

21. In Part IV of the principal Order (functions of the Department) at the beginning there shall be inserted—

##### **“Functions of the Department**

49A. The Department may—

(a) for the purpose of promoting fire safety, disseminate information or advice;

(b) for the purpose of dealing with civil emergencies, make provision for the storage and maintenance of emergency fire fighting vehicles and associated equipment and such other arrangements as the Department thinks fit.”.

#### **Savings and repeals**

22.—(1) The saving provisions in Schedule 1 shall have effect.

(2) The statutory provisions set out in Schedule 2 are hereby repealed to the extent specified in column 3 of that Schedule.

*N. H. Nicholls*  
Clerk of the Privy Council