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## STATUTORY INSTRUMENTS

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# 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

*Health and safety regulations and approved codes of practice*

#### **Health and safety regulations**

17 <sup>F1</sup>.—<sup>F2F3</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>F4</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;

**Status:** Point in time view as at 01/03/2014.

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- (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>F5</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.

<b>F1</b>	mod. by SR 2000/87; 2000/120
<b>F2</b>	mod. by SR 2000/194
<b>F3</b>	mod. by 2002 c. 8 (NI)
<b>F4</b>	1998 NI 18
<b>F5</b>	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>F6</sup> Executive]**

<sup>F7F8</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>F6</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>F6</sup> Executive] as in its opinion are suitable for that purpose.

(2) The<sup>F6</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>F6</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>F9</sup>...); and
- (b) such government departments and other bodies, if any, as in relation to any matter dealt with in the code, the<sup>F6</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>F6</sup> Executive] under paragraph (1), the<sup>F6</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>F6</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>F6</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>F6</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>F6</sup> Executive] withdraws its approval from a code of practice approved under this Article, the<sup>F6</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>F6</sup> Executive] under paragraph (1)( b) to approve a code of practice issued or proposed to be issued otherwise than by the<sup>F6</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.

- F6** 1998 NI 18
- F7** mod. by SR 2000/87; 2000/120
- F8** mod. by 2002 c. 8 (NI)
- F9** 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)

- C1** 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\(1\)\(a\)](#)
- C2** 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>F10F11</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

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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>F12</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.

**F10** mod. by SR 2000/87; 2000/120

**F11** mod. by 2002 c. 8 (NI)

**F12** 1998 NI 18

**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)**

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