
STATUTORY INSTRUMENTS

1981 No. 158

Clean Air (Northern Ireland) Order 1981

Smoke control areas

Smoke control areas

17.—(1) A district council may, by order confirmed by the Department, declare the whole or any part of the district of the council to be a smoke control area.

(2)^{F1} Subject to any exemptions and limitations for the time being in force under this Article, and to the provisions of paragraph (3), if, on any day, smoke is emitted from a chimney of any building within a smoke control area, the occupier of that building shall be guilty of an offence.

(3) In proceedings for an offence under paragraph (2) it shall be a defence to prove that the emission of smoke was not caused by the use of any fuel other than an authorised fuel.

[^{F2}(3A) The Department must keep a list of authorised fuels for the purposes of this Article.

(3B) The Department, having regard (among other things) to the sulphur content of a fuel, may include the fuel on the list of authorised fuels.

(3C) The Department must publish in such manner as it considers appropriate—

- (a) the list of authorised fuels; and
- (b) a revised copy of the list as soon as is reasonably practicable after any change is made to it.]

(4) An order made by a district council under this Article—

- (a) may make different provision for different parts of the smoke control area;
- (b) may limit the operation of this Article to specified classes of building in the area;
- (c) may exempt—

- (i) specified buildings or classes of building; or
- (ii) specified fireplaces or classes of fireplace;

in the area from the operation of this Article, upon such conditions and for such periods as may be specified in the order.

(5) Schedule 2 shall apply to the confirmation and coming into operation of orders made by district councils under this Article.

(6) An order made by a district council and confirmed under this Article may be varied or revoked by a subsequent order so made and confirmed.

[^{F3}(7)^{F1} The Department may exempt any class of fireplace from the provisions of this Article if it is satisfied that such class of fireplace can be used for burning fuel, other than authorised fuels, without producing any smoke or a substantial quantity of smoke.

(7A) An exemption under paragraph (7) may be made subject to such conditions as the Department considers appropriate.

(7B) The Department must publish in such manner as it considers appropriate—

- (a) a list of those classes of fireplace that are exempt under paragraph (7), including details of any conditions to which an exemption is subject; and

(b) a revised copy of the list as soon as is reasonably practicable after any change is made to the classes of fireplace that are so exempt or to the conditions to which an exemption is subject.]

(8) After consulting with the district council (unless, on account of urgency, such consultation is impracticable) the Department may, if at any time it appears necessary or expedient so to do, by order suspend or relax the operation of this Article in relation to the whole or any part of a smoke control area.

(9) As soon as practicable after the making of an order under paragraph (8), or an order revoking or varying such an order, the district council shall take such steps as appear to them to be suitable for bringing the effect of the order to the notice of persons affected by the order.

(10) Subject to paragraph (11), this Article shall apply in relation to a chimney serving the furnace of any boiler or industrial plant (being a boiler or plant attached to a building or for the time being fixed to or installed on any land) as it applies in relation to a chimney of a building.

(11) In relation to any chimney of the kind referred to in paragraph (10) which is not a chimney of a building, for the references in this Article—

- (a) to buildings there shall be substituted references to boilers or plant;
- (b) to the occupier of the building there shall be substituted references to the person having possession of the boiler or plant.

(12) Notwithstanding anything in paragraph 7 of Schedule 2 an order made by a district council under this Article varying a previous order so as to exempt specified buildings or classes of building or specified fireplaces or classes of fireplace from the operation of this Article may come into operation on, or at any time after, the date of its confirmation.

(13) A district council shall not without the consent of the Department exercise its power under paragraph 8 of Schedule 2 of postponing the coming into operation of an order under this Article for a period of more than twelve months or for periods amounting in all to more than twelve months.

(14) An order made under this Article before the date of the coming into operation of Article 62 of the Pollution Control and Local Government (Northern Ireland) Order 1978 which would in pursuance of a resolution under the said paragraph 8 come into operation after the expiration of the year beginning with that date shall, unless the Department otherwise directs, come into operation on the expiration of that year, and, where the Department so directs, shall come into operation on a day specified in the direction (being not later than that specified in the resolution).

F1 mod. by SR 1999/289

F2 Art. 17(3A)-(3C) inserted (10.10.2016) by [Environmental Better Regulation Act \(Northern Ireland\) 2016 \(c. 13\), ss. 15\(2\), 27\(2\)](#); S.R. 2016/332, art. 2

F3 Art. 17(7)-(7B) substituted for art. 17(7) (10.10.2016) by [Environmental Better Regulation Act \(Northern Ireland\) 2016 \(c. 13\), ss. 16, 27\(2\)](#); S.R. 2016/332, art. 2

Adaptation of fireplaces in private dwellings

18.—(1) If, after the confirmation of an order made by a district council under Article 17, the owner or occupier of, or any person having an estate or interest in, any private dwelling which is or will be within a smoke control area as a result of the order, not being a new dwelling, incurs expenditure on adaptations in or in connection with the dwelling to avoid contraventions of Article 17, the district council, subject to paragraph (2),—

- (a) shall repay to the owner, occupier or other person seven-tenths of the expenditure so incurred; and
- (b) may if it thinks fit also repay to the owner, occupier or other person the whole or any part of the remainder of that expenditure.

- (2) Paragraph (1) shall not apply to any expenditure unless it is—
- (a) incurred before the coming into operation of the order and with the approval of the district council given (whether before or after the expenditure is incurred) for the purposes of paragraph (1) and this paragraph; or
 - (b) reasonably incurred in carrying out adaptations required by a notice given under paragraph (3);

and, in either such case, unless the adaptations in question are carried out to the satisfaction of the district council.

(3) The district council may, by notice in writing served on the person appearing to them to be the owner or occupier of a private dwelling which is, or when an order made under Article 17 comes into operation will be, within a smoke control area, require the carrying out of adaptations in or in connection with the dwelling to avoid contraventions of Article 17.

(4) A notice under paragraph (3) shall require the adaptations to be carried out within such period, being not less than twenty-one days from the service of the notice, as may be specified in the notice, but that period may be extended by written permission of the district council.

(5) Where the district council serve a notice on any person under paragraph (3) it shall inform each other person on whom a notice under that paragraph may be served of the fact that such a notice has been served.

(6) A person on whom a notice is served under paragraph (3) may, within twenty-one days from the service of the notice, or such longer period as the district council may in writing allow, appeal to a court of summary jurisdiction on any of the following grounds which are appropriate to the circumstances of the particular case—

- (a) that the notice is not justified by the terms of paragraph (3);
- (b) that there has been some informality, defect or error in, or in connection with, the notice;
- (c) that the district council has refused unreasonably to approve the execution of alternative adaptations, or that the adaptations required by the notice to be carried out are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time within which the adaptations are to be carried out is not reasonably sufficient for the purpose;
- (e) that the notice might lawfully have been served on the occupier of the dwelling in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served.

(7) When an appeal is brought under paragraph (6) the court may, as it thinks fit, confirm, revoke or vary the notice, but where the appeal is based solely on the grounds of some informality, defect or error in, or in connection with a notice, the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(8) Where the grounds upon which an appeal under paragraph (6) is brought include the ground specified in paragraph (6)(e), the appellant shall serve a copy of his notice of appeal on each other person referred to in the notice, and on the hearing of the appeal the court may make such order as it thinks fit with respect to—

- (a) the person by whom the adaptations are to be carried out;
- (b) whether that person is to bear the whole or part of the cost of carrying out the adaptations, and the proportion which any such part is to bear to that cost; and
- (c) whether any other person is to make to that person a contribution towards that cost, and the proportion which such contribution is to bear to that cost.

(9) In exercising its powers under paragraph (8) the court shall have regard, as between an owner and an occupier, to the terms and conditions (whether contractual or statutory) of the tenancy and to the nature of the adaptations to be carried out.

(10) If a notice served under paragraph (3) is not complied with, then—

- (a) after the expiration of the time within which the adaptations are required to be carried out; or
- (b) if on an appeal brought against the notice, the notice has been confirmed with or without variation, after the expiration of twenty-one days from the final determination of the appeal or such longer period as the court in determining the appeal may fix;

the district council may carry out the adaptations required to be carried out by the notice (with any variation made by the court).

(11) Where the district council carry out adaptations under paragraph (10), the council may,—

- (a) if an order is not made by virtue of paragraph (8), recover from the person on whom the notice was served under paragraph (3) the appropriate fraction of the relevant expenses;
- (b) if an order is made by virtue of paragraph (8), recover from—
 - (i) the person who under the order is to bear the whole of the cost of carrying out the adaptations the appropriate fraction of the relevant expenses;
 - (ii) any person who under the order is to bear part of, or make a contribution towards, the cost of carrying out the adaptations the appropriate fraction of so much of the relevant expenses as bears to the relevant expenses the same proportion as that fixed under paragraph (8)(*b*) or, as the case may be, paragraph (8)(*c*).

(12) In paragraph (11)—

“appropriate fraction” means three-tenths or such smaller fraction as the district council may in any particular circumstances determine;

“relevant expenses” means the expenses reasonably incurred by the district council in carrying out the adaptations.

Contributions by Department to district councils

19.—(1) The Department may make, subject to paragraph (2), a contribution towards the following expenses of any district council, that is to say—

- (a) any expenses incurred in making the payments under Article 18(1);
- (b) any expenses incurred in carrying out adaptations required by notices under Article 18(3) in or in connection with dwellings which are not new dwellings;
- (c) any expenses incurred in making, in or in connection with private dwellings owned by or under the control of the council, not being new dwellings, adaptations to avoid contraventions of Article 17.

(2) Expenses shall not be taken into account under paragraph (1) unless they are approved by the Department.

(3) A contribution under paragraph (1) in respect of any expenses shall be a single payment equal—

- (a) in relation to expenses of the kind mentioned in paragraph (1)(*a*), to four-sevenths of the amount of the expenses;
- (b) in relation to expenses of the kind mentioned in paragraph (1)(*b*), to four-sevenths of the amount arrived at by deducting from the expenses incurred under Article 12(10) the amount recoverable under Article 12(11);

- (c) in relation to expenses of the kind referred to in paragraph (1)(c), to two-fifths of the amount of the expenses.

Interpretation of Articles 18 and 19

20.—(1) In Article 18 and 19, references to adaptations in or in connection with a dwelling to avoid contraventions of Article 17 shall, subject to paragraph (3), be construed as references to the execution of any of the following works (whether in or outside the dwelling), that is to say—

- (a) adapting or converting any fireplace; or
- (b) replacing any fireplace by—
 - (i) another fireplace; or
 - (ii) some other means of heating or cooking; or
- (c) altering any chimney which serves any fireplace; or
- (d) providing gas ignition, electric ignition or any other special means of ignition; or
- (e) carrying out any operation incidental to any of the operations mentioned in sub-paragraphs (a) to (d);

being works which are reasonably necessary in order to make what is in all the circumstances suitable provision for heating and cooking without contraventions of Article 17.

(2) For the purposes of paragraph (1) the provision of any igniting appliance (whether fixed or not) operating by means of gas, electricity or any other special means shall be deemed to be the execution of works.

(3) Except for the purposes of Article 18(3) to (11), works which make suitable provision of the kind referred to in paragraph (1) shall not be deemed to be other than adaptations to avoid contraventions of Article 17 by reason that they go beyond what is reasonably necessary for that purpose, but any expenditure incurred in executing them in excess of the expenditure which would have been reasonably incurred in doing what was reasonably necessary shall be left out of account.

(4) In Articles 18 and 19, references to expenditure or expenses incurred in the execution of works include references to the cost of any fixed cooking or heating appliance installed by means of the execution of the works, notwithstanding that the appliance can be readily removed from the dwelling without injury to itself or to the fabric of the dwelling.

- (5) For the purposes of Articles 18 and 19, a person who enters into either—
- (a) a conditional sale agreement for the sale to him, or
 - (b) a hire-purchase agreement for the bailment to him,

of a cooking or heating appliance shall be treated as having incurred on the date of the agreement expenditure of an amount equal to the price which would have been payable for that appliance if he had purchased it for cash on that date.

(6) In considering for the purposes of Articles 18 and 19 whether any and, if so, what works are reasonably necessary in order to make suitable provision of the kind referred to in paragraph (1), regard shall be had to any difficulty there may be in obtaining, or in obtaining otherwise than at a high price, any fuels which would have to be used but for the execution of the works.

(7) The district council shall give to a person carrying out works to make suitable provision of the kind referred to in paragraph (1) a reasonable freedom of choice as between appliances burning different kinds of fuel but the provision or installation of, or the execution of works for the provision or installation of, any appliance which—

- (a) falls within any class of appliance which, in the opinion of the district council, is unsuitable for installation in its district as tending, by reason of its consumption of fuel (of whatever

kind) or its consumption of that fuel at the times when it is generally used, to impose undue strain on the fuel resources available for that district; or

- (b) falls within any class of appliance for the time being designated by the Department as being in the opinion of the Department unsuitable for installation in the district of the council as tending, by reason as mentioned in sub-paragraph (a), to impose undue strain on the fuel resources available, either for that district or generally;

shall not be regarded as work which makes suitable provision of the kind referred to in paragraph (1).

(8) For the purposes of Article 18(1), where before a payment by a district council under that paragraph becomes payable, the person who would be entitled to that payment assigns to another person his right to that payment, and gives notice of the assignment to the district council, the council shall, when that payment becomes payable, make that payment to that other person.

Variation of provisions in Articles 18, 19 and 20

21. The Head of the Department may, with the approval of the Head of the Department of Finance, by order made subject to affirmative resolution—

- (a) vary, generally or in relation to cases specified in the order, the amount of repayment referred to in Article 18(1)(a), and make corresponding variations in the appropriate fraction to be used in relation to the amounts recoverable under Article 18(11);
- (b) vary the amounts of the contributions referred to in Article 19(3);
- (c) extend the provisions of Articles 18 and 19 to any class of new dwelling;
- (d) vary or add to—
 - (i) the works which are referred to in Article 20(1);
 - (ii) the appliances referred to in Article 20(1), of which the provision is deemed to be the execution of works.C

Power of district council to make grants towards adaptations in certain premises

22.—(1) This Article applies to any premises or part of any premises, being or being part of a hereditament which in any valuation list prepared by the Commissioner of Valuation is distinguished as exempt under Article 41 of the Rates (Northern Ireland) Order 1977 and which the Commissioner certifies is so distinguished as being a hereditament of a description mentioned in paragraph (2)(b) or (c) of that Article.

(2) If, after the confirmation of an order made by a district council under Article 17, the owner or occupier of any premises or part of any premises to which this Article applies and which will be within the smoke control area as the result of the order incurs expenditure on adaptations in or in connection with the premises or part of the premises to avoid contraventions of Article 17, the district council may repay to him the whole or any part of that expenditure.

(3) Article 20 shall apply for the interpretation of this Article as it applies for the interpretation of Articles 18 and 19, but as if references in that Article to a dwelling were references to any premises or part of any premises to which this Article applies.

Changes to legislation:

There are currently no known outstanding effects for the Clean Air (Northern Ireland) Order 1981, Smoke control areas.