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STATUTORY INSTRUMENTS

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**1981 No. 158**

**Clean Air (Northern Ireland) Order 1981**

Introductory

**Title and commencement**

- 1.—(1) This Order may be cited as the Clean Air (Northern Ireland) Order 1981.  
(2) *Commencement*

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 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—

[<sup>F1</sup>“authorised fuel” means a fuel that is included on a list of authorised fuels kept by the Department under Article 17(3A);]

“chimney” includes structures and openings of any kind from or through which smoke, grit, dust or fumes may be emitted, and in particular, includes flues, and references to a chimney of a building include references to a chimney which serves the whole or part of a building but is structurally separate from it;

“conditional sale agreement” means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

“the Department” means the Department of the Environment;

“day” means a period of twenty-four hours beginning at midnight;

“fireplace” includes any furnace, grate or stove, whether open or closed;

“fumes” means any airborne solid matter smaller than dust;

“gaseous emissions” includes gases and fumes containing sulphur or any compound of sulphur;

“grit and dust” includes solid particles of any kind;

“heating” in relation to a dwelling includes the heating of water;

“hire-purchase agreement” means an agreement, other than a conditional sale agreement, under which—

- (a) goods are bailed in return for periodical payments by the person to whom they are bailed, and
- (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs—
  - (i) the exercise of an option to purchase by that person,
  - (ii) the doing of any other specified act by any party to the agreement,

(iii) the happening of any other specified event;

“industrial plant” includes any still, melting pot or other plant used for any industrial or trade purposes, and also any incinerator used for or in connection with any such purposes;

“owner” has the same meaning as in the Public Health (Ireland) Act 1878 ;

“practicable” means reasonably practicable having regard, amongst other things, to local conditions and circumstances, to the financial implications and to the current state of technical knowledge, and “practicable means” includes the provision and maintenance of plant and the proper use of it;

“prejudicial to health” means injurious, or likely to cause injury, to health;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department;

“smoke” includes soot, ash, grit and gritty particles emitted in smoke.

(3) In this Order “dark smoke” means smoke which, if compared in the appropriate manner with a chart of the type known on the 9th June 1964 as the Ringelmann Chart, would appear to be as dark as or darker than shade 2 on that chart; but—

- (a) in proceedings brought under Article 3, 4 or 23, the court may be satisfied that smoke is or is not dark smoke as so defined notwithstanding that there has been no actual comparison of the smoke with a chart of that type; and
- (b) in particular, and without prejudice to the generality of the preceding provisions of this paragraph, if any method is prescribed for ascertaining whether smoke is dark smoke as so defined, proof in any such proceedings that that method was properly applied, and that the smoke was ascertained by that method to be or not to be dark smoke as so defined, shall be accepted as sufficient.

(4) Any reference in this Order to the occupier of a building shall, in relation to any building different parts of which are occupied by different persons, be construed as a reference to the occupier or other person in control of the part of the building in which the relevant fireplace is situated.

(5) In this Order, “private dwelling” means any building or part of a building used or intended to be used as such, and a building or part of a building shall not be deemed for the purposes of this Order to be used or intended to be used otherwise than as a private dwelling by reason that a person who resides or is to reside in it is or is to be required or permitted to reside in it in consequence of his employment or of holding an office; and “dwelling” shall be construed accordingly.

(6) In this Order “new dwelling” means a dwelling which either—

- (a) was erected after the 9th June 1964; or
- (b) was produced by conversion, after the 9th June 1964, of other premises, with or without the addition of premises erected after that date;

and for the purposes of this paragraph, a dwelling or premises shall not be treated as erected or converted after the 9th June 1964 unless the erection or conversion was begun after that date.

(7) Any furnaces which are in the occupation of the same person and served by a single chimney shall, for the purposes of Articles<sup>F2</sup> 7 to 12 and 15 be taken to be one furnace.

(8) For the purposes of section 42(2) of the Northern Ireland Constitution Act 1973 (validity of Acts of the Parliament of Northern Ireland), provisions of this Order which re-enact provisions of an Act of the Parliament of Northern Ireland shall be deemed to be provisions of such an Act.

**F1** Words in art. 2(2) substituted (10.10.2016) by [Environmental Better Regulation Act \(Northern Ireland\) 2016 \(c. 13\)](#), ss. **15(1)**, 27(2); S.R. 2016/332, art. 2

**F2** prosp. rep. by 1997 NI 18

## Dark smoke

### **Prohibition of dark smoke from chimneys**

**3.—(1)** Subject to the provisions of this Order, dark smoke shall not be emitted from a chimney of any building, and if, on any day, dark smoke is so emitted, the occupier of the building shall be guilty of an offence.

(2) Emissions of smoke from any chimney lasting for not longer than such periods as may be prescribed shall, in such classes of case and subject to such limitations as may be prescribed, be left out of account for the purposes of this Article.

(3) In any proceedings for an offence under this Article, it shall be a defence to prove—

- (a) that the contravention complained of was solely due to the lighting up of a furnace which was cold and that all practicable steps had been taken to prevent or minimise the emission of dark smoke; or
- (b) that the contravention complained of was solely due to some failure of a furnace or of apparatus used in connection with a furnace and that—
  - (i) that failure could not reasonably have been foreseen, or, if foreseen, could not reasonably have been provided against; and
  - (ii) the contravention could not reasonably have been prevented by action taken after the failure occurred; or
- (c) that the contravention complained of was solely due to the use of unsuitable fuel and that—
  - (i) suitable fuel was unobtainable; and
  - (ii) the least unsuitable fuel which was available was used; and
  - (iii) all practicable steps had been taken to prevent or minimise the emission of dark smoke as a result of the use of that fuel; or
- (d) that the contravention complained of was due to a combination of two or more of the causes specified in sub-paragraphs ( a ) to ( c ) and that the other conditions specified in those sub-paragraphs are satisfied in relation to those causes respectively.

(4) Subject to paragraph (5), 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.

(5) In relation to any chimney of the kind referred to in paragraph (4) which is not a chimney of a building, the reference in this Article to the occupier of the building shall be construed as a reference to the person having possession of the boiler or plant.

### **Prohibition of dark smoke from industrial or trade premises**

**4.—(1)** Subject to the following provisions of this Article, dark smoke shall not be emitted from any industrial or trade premises and if, on any day, dark smoke is so emitted the occupier of the premises shall be guilty of an offence.

(2) Paragraph (1) shall not apply to the emission of dark smoke from a chimney of a building or from any other chimney to which Article 3 applies.

(3) The Department may by regulations exempt from paragraph (1), subject to compliance with such conditions, if any, as may be prescribed, the emission of dark smoke caused by the burning of any prescribed matter.

(4) In proceedings for an offence under this Article it shall be a defence to prove that the contravention complained of was inadvertent and that all practicable steps had been taken to prevent or minimise the emission of dark smoke.

(5) In this Article “industrial or trade premises” means premises used for any industrial or trade purposes or premises not so used on which matter is burnt in connection with any industrial or trade process.

#### Smoke from furnaces

#### **Certain furnaces to be so far as practicable smokeless**

5.—(1) Subject to the provisions of this Article, a furnace shall not be installed in—

- (a) a building; or
- (b) any boiler or industrial plant attached to a building or for the time being fixed to or installed on any land;

unless that furnace is so far as practicable capable of being operated continuously without emitting smoke when burning fuel of a type for which the furnace was designed.

(2) This Article shall not apply to a furnace the installation of which has been begun, or an agreement for the purchase or installation of which has been entered into before 1st July 1965.

(3) Any furnace installed in accordance with plans and specifications submitted to, and approved for the purposes of this Article by, a district council shall be deemed to comply with the provisions of paragraph (1).

(4) A furnace, other than a furnace to which paragraph (6) applies, shall not be installed in a building or in any such boiler or plant as is referred to in paragraph (1)( b) unless notice of the proposal to install the furnace has been given to the district council.

(5) After such date as may be prescribed, a furnace of such kind as may be prescribed shall not be installed in a building or in any such boiler or plant as is referred to in paragraph (1)( b) unless plans and specifications of the furnace have been submitted to the district council for its approval for the purposes of this Article.

(6) Where plans and specifications are submitted to the district council for its approval for the purposes of this Article (whether or not they are required to be submitted pursuant to paragraph (5)), the furnace to which the plans and specifications relate shall not be installed in a building or in any such boiler or plant as is referred to in paragraph (1)( b) except in accordance with the plans and specifications so approved.

(7) The provisions of Schedule 1 shall, subject to paragraph (8), apply in relation to an application for approval by the district council of any plans and specifications submitted to that council for the purposes of this Article.

(8) The district council shall not grant any application for approval under this Article if the furnace to which the application relates is not so far as practicable capable of being operated continuously without emitting smoke when burning fuel of a type for which the furnace was designed.

(9) A person—

- (a) who installs a furnace in contravention of paragraph (4), (5) or (6); or
- (b) on whose instructions a furnace is installed in contravention of any of those paragraphs;

shall be guilty of an offence.

(10) A person—

- (a) who installs a furnace in contravention of paragraph (1); or
- (b) on whose instructions a furnace is so installed;

shall, unless the furnace is one to which paragraph (6) applies, be guilty of an offence.

(11) This Article shall not apply to furnaces designed solely or mainly for use for domestic purposes, not being furnaces of boilers with a maximum heating capacity of<sup>F3</sup> 16.12 kilowatts] per hour.

(12) This Article shall apply in relation to—

- (a) the attachment to a building of a boiler or industrial plant which already contains a furnace;
- (b) the fixing to or installation on any land of any boiler or industrial plant which already contains a furnace;

as it applies in relation to the installation of a furnace in any boiler or industrial plant of the kind mentioned in paragraph (1)( b).

(13) This Article shall apply in relation to such works of reconstruction of any furnace as may be prescribed as it applies in relation to the installation of any furnace.

**F3** SR 1994/192

*Art. 6 rep. by 1985 NI 15*

Grit and dust from furnaces

### **Grit and dust from furnaces**

**7**<sup>F4</sup>.—(1) The Department may by regulations prescribe limits on the rates of emission of grit and dust from the chimneys of furnaces to which this Article applies.

(2) If on any day grit or dust is emitted from a chimney serving a furnace to which this Article applies at a rate exceeding the relevant limit prescribed under paragraph (1), the occupier of any building in which the furnace is situated shall be guilty of an offence.

(3) In proceedings for an offence under paragraph (2) it shall be a defence to prove that the best practicable means had been used for minimising the alleged emission.

(4) If, in the case of a building containing a furnace to which this Article applies and which is served by a chimney to which there is no limit applicable under paragraph (1), the occupier fails to use any practicable means there may be for minimising the emission of grit or dust from the chimney, he shall be guilty of an offence.

(5) This Article applies to any furnace in which solid, liquid or gaseous matter is burnt, not being a furnace designed solely or mainly for domestic purposes and used for heating a boiler with maximum heating capacity of less than<sup>F5</sup> 16.12 kilowatts] per hour.

**F4** prosp. rep. by [1997 NI 18](#)  
**F5** SR 1994/192

### **New furnaces to be fitted with plant to arrest grit and dust**

**8**<sup>F6</sup>.—(1) Subject to Article 9, this Article applies to a furnace of such kind as may be prescribed used to burn fuel or solid waste.

(2) Subject to the provisions of this Article, a furnace to which this Article applies in any building shall not be used to burn fuel or solid waste, unless the furnace is provided with plant for arresting grit and dust for which plans and specifications have been submitted to, and approved for the purposes of this Article by, the district council, and that plant is properly installed, maintained and used.

(3) If a furnace to which this Article applies is used in contravention of paragraph (2) the occupier of the building shall be guilty of an offence.

(4) Paragraph (2) shall not apply to a furnace which has been installed, the installation of which has been begun, or an agreement for the purchase or installation of which has been entered into before 1st July 1965.

(5) The provisions of Schedule 1 shall, subject to the provisions of this Article, apply in relation to an application for approval by the district council of any plans and specifications submitted to that council for the purposes of this Article.

(6) The district council shall not grant any application for approval under this Article if the furnace to which the application relates does not comply with such minimum standards as may be prescribed for the concentration or the rate (or both the concentration and the rate) of emissions of grit and dust from furnaces to which this Article applies.

*Paras. (7), (8) rep. by 1985 NI 15*

**F6** prosp. rep. by [1997 NI 18](#)

### **New furnaces to be fitted with arrestment plant**

**9** <sup>F7</sup>.—(1) Subject to the provisions of Article 10, no furnace to which Article 8 applies shall be used in a building unless the furnace is provided with plant for arresting grit and dust for which plans and specifications have been submitted to, and approved for the purposes of this Article by, the district council, and that plant is properly installed, maintained and used and if on any day a furnace is used in contravention of this paragraph the occupier of the building shall be guilty of an offence.

(2) Paragraph (1) shall not apply to a furnace which has been installed, the installation of which has been begun, or an agreement for the purchase or installation of which has been entered into, before the date of the coming into operation of Article 62 of the Pollution Control and Local Government (Northern Ireland) Order 1978 .

(3) Article 8(2) shall not apply to a furnace to which paragraph (1) applies and [<sup>F8</sup> Article 8(5) and (6)] shall apply in relation to an approval under paragraph (1) as they apply in relation to an approval under Article 8.

**F7** prosp. rep. by [1997 NI 18](#)

**F8** [1985 NI 15](#)

### **Exemptions from Article 9**

**10** <sup>F9</sup>.—(1) The Department may by regulations provide that furnaces of any prescribed class shall while used for a prescribed purpose be exempted from the operation of Article 9(1).

(2) If on the application of the occupier of a building a district council is satisfied that the emission of grit and dust from any chimney serving a furnace in the building will not be prejudicial to health or a nuisance if the furnace is used for a particular purpose without compliance with Article 9(1), it may exempt the furnace from the operation of that paragraph while used for that purpose.

*Para. (3) rep. by 1985 NI 15*

(4) If a district council to which an application is duly made for an exemption under paragraph (2) fails to determine the application and to give a written notice of its decision to the applicant within eight weeks of receiving the application or such longer period as may be agreed in writing between the applicant and the council, the furnace shall be treated as having been granted an exemption from the operation of Article 9(1) while used for the purpose specified in the application.

(5) If a district council decides not to grant an exemption under paragraph (2), it shall give the applicant a written notification of its decision stating its reasons, and the applicant may within twenty-eight days of receiving the notification appeal against the decision to the Department.

(6) On an appeal under this Article the Department may confirm the decision appealed against, or may grant the exemption applied for or may vary the purpose for which the furnace to which the application relates may be used without compliance with Article 9(1), and shall give the appellant a written notification of any decision of the Department on an appeal under this Article, stating the reasons for the decision.

(7) If on any day a furnace which is exempt from the operation of Article 9(1) is used for a purpose other than a prescribed purpose or, as the case may be, a purpose for which the furnace may be used by virtue of paragraph (2), (4) or (6), the occupier of the building shall be guilty of an offence.

**F9** prosp. rep. by [1997 NI 18](#)

### Measurement of grit and dust from furnaces

**11**<sup>F10</sup>.—(1) If a furnace to which Article 8 applies is used in any building the district council may, by notice in writing served on the occupier of the building, direct that the provisions of paragraph (2) shall apply to the furnace and those provisions shall apply accordingly.

(2) Where this paragraph is applied to a furnace, the occupier of the building shall comply with such requirements as may be prescribed as to—

- (a) making and recording measurements from time to time of the grit, dust and fumes emitted from the furnace;
- (b) making adaptations for that purpose to the chimney serving the furnace;
- (c) providing and maintaining apparatus for making and recording the measurements; and
- (d) informing the district council of the results obtained from the measurements or otherwise making those results available to it.

(3) The district council may, by subsequent notice in writing served on the occupier of the building, revoke any direction given under paragraph (1), without prejudice, however, to their power to give another direction under that paragraph.

(4) An occupier of a building who fails to comply with any requirements under paragraph (2) shall be guilty of an offence.

(5) In the case of a furnace to which Article 8 applies the occupier of the building in which the furnace is situate may, by notice in writing given to the district council, request the council to make and record measurements of the grit, dust and fumes emitted from the furnace.

(6) A notice given under paragraph (5) by the occupier of a building may be withdrawn by a subsequent notice in writing given to the district council by him or any subsequent occupier of that building.

(7) While a notice is in force under paragraph (5) the district council shall from time to time make and record measurements of the grit, dust and fumes emitted from the furnace to which the notice relates and the occupier shall not be under a duty to comply with any requirements under paragraph (2) in relation to the furnace, except those imposed by virtue of sub-paragraph ( b ) of that paragraph.

(8) A direction under paragraph (1) applying paragraph (2) to a furnace shall contain a statement of the effect of paragraphs (5) to (7).

(9) The occupier of a building who by virtue of paragraph (2) is under a duty to make and record measurements of grit, dust and fumes emitted from a furnace in the building shall permit the district council to be present during the making and recording of those measurements.

**F10** prosp. rep. by [1997 NI 18](#)

### Information about furnaces and fuel consumed

**12**<sup>F11</sup>.—(1) For the purpose of enabling the district council properly to perform its functions under and in connection with Articles 8 to 11, the district council may, by notice in writing served on the occupier of any building, require him to furnish to the council, within fourteen days or such longer time as may be specified in the notice, such information as to—

- (a) the furnaces in the building; and
- (b) the fuel or waste burned in those furnaces;

as the council may reasonably require for that purpose.

(2) Any person who, having been duly served with a notice under paragraph (1),—

- (a) fails to comply with the requirements of the notice within the time specified; or
- (b) furnishes any information in reply to the notice which he knows to be false in a material particular;

shall be guilty of an offence.

**F11** prosp. rep. by [1997 NI 18](#)

### Grit and dust from outdoor furnaces, etc.

**13**<sup>F12</sup>.—(1) Subject to the provisions of this Article, Articles 7 to 12 shall apply in relation to 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 they apply in relation to a furnace in a building.

(2) In relation to a furnace which is not in a building, the references in Articles 7 to 12 to the occupier of the building shall be construed as references to the person having possession of the boiler or plant.

(3) In relation to a furnace which is already contained in any boiler or industrial plant of the kind mentioned in paragraph (1)—

- (a) the references in Articles 8 and 9(3) to the installation of a furnace shall be construed as references to attaching the boiler or plant to the building or fixing it to or installing it on any land; and
- (b) the reference to the purchase of a furnace shall be construed as a reference to purchasing the boiler or plant.

**F12** prosp. rep. by [1997 NI 18](#)

### Height of chimneys

#### Height of chimneys

**14.**—(1) Where it is proposed to erect a chimney (other than a chimney of a building used or to be used wholly for one or more than one of the following purposes, that is to say as a residence or residences, a shop or shops or an office or offices) or a chimney to which Article 15 applies for carrying smoke or grit and dust or gases, plans for that chimney (showing also where it is to be erected) shall be submitted to the district council for its approval for the purposes of this Article.

(2) The provisions of Schedule 1 shall, subject to the provisions of this Article, apply in relation to an application for approval by the district council of plans submitted to that council pursuant to this Article.



(3) The district council shall not approve plans submitted to that council pursuant to this Article unless it is satisfied that the height of the chimney as shown on the plans will be sufficient to prevent, so far as practicable, the smoke or grit and dust or gases from becoming a nuisance or prejudicial to health having regard to—

- (a) the purpose of the chimney;
- (b) the position and description of buildings near to it;
- (c) the levels of the neighbouring ground; and
- (d) any other matters requiring consideration in the circumstances.

(4) Where a chimney to which paragraph (1) applies is erected otherwise than in accordance with plans approved by the district council for the purposes of this Article the district council may—

- (a) cause so much of that erection as has been so carried out to be altered, pulled down or removed;
- (b) recover summarily, from the person who caused that erection to be carried out, any expenses incurred by the district council in the carrying out of work of the kind referred to in sub-paragraph ( a ).

#### **Height of chimneys serving a furnace**

**15.**—(1) An occupier of a building shall not knowingly cause or permit a furnace to which this Article applies to be used in the building<sup>F13</sup> as mentioned in Article 9(1) unless the height of the chimney serving the furnace has been approved under this Article and any conditions subject to which the approval was granted are complied with, and if on any day he does so, he shall be guilty of an offence.

(2) A person having possession of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land, other than an exempted boiler or plant, shall not knowingly cause or permit a furnace of the boiler or plant to which this Article applies to be used<sup>F13</sup> as mentioned in Article 9(1), unless the height of the chimney serving the furnace has been approved under this Article and any conditions subject to which the approval was granted are complied with, and if on any day he does so, he shall be guilty of an offence.

*Para. (3) rep. by 1985 NI 15*

(4) A district council shall not approve the height of a chimney under this Article unless it is satisfied that its height will be sufficient to prevent, so far as practicable, the smoke, grit, dust, gases or fumes emitted from the chimney from becoming prejudicial to health or a nuisance having regard to—

- (a) the purpose of the chimney;
- (b) the position and descriptions of buildings near it;
- (c) the levels of the neighbouring ground;
- (d) any other matters requiring consideration in the circumstances.

(5) An approval of the height of a chimney by a district council under this Article may be granted without qualification or subject to conditions as to the rate or quality, or the rate and quality, of emissions from the chimney.

(6) If a district council to whom an application is duly made for approval under this Article fails to determine the application and to give a written notification of its decision to the applicant within two months of receiving the application or such longer period as may be agreed in writing between the applicant and the council, the approval applied for shall be deemed to have been refused.

(7) If a district council decides not to approve the height of a chimney under this Article or to attach conditions to its approval, it shall give the applicant a written notification of its decision,

stating its reasons and, in the case of a decision not to approve the height of the chimney, specifying the lowest height (if any) which it is prepared to approve unconditionally or the lowest height which it is prepared to approve if approval is granted subject to any specified conditions, or (if it thinks fit) both, and the applicant may within twenty-eight days of receiving the notification appeal against the decision to the Department.

(8) On an appeal under this Article the Department may confirm the decision appealed against, or may approve the height of the chimney without qualification or subject to conditions as to the rate or quality, or the rate and quality, of emissions from the chimney, or may cancel any conditions imposed by the district council or substitute for any conditions so imposed any other conditions which the council had power to impose.

(9) The Department shall give the appellant a written notification of any decision on an appeal under this Article stating the reasons for the decision, and, in the case of a decision not to approve the height of a chimney, specifying the lowest height (if any) which the Department is prepared to approve unconditionally or the lowest height which the Department is prepared to approve if approval is granted subject to any specified conditions, or (if it thinks fit) both.

(10) This Article applies to—

- (a) any furnace served by a chimney other than a chimney the construction of which was begun or the plans for which were passed before the date of the coming into operation of Article 62 of the Pollution Control and Local Government (Northern Ireland) Order 1978 ;
- (b) any furnace the combustion space of which has been increased since the date of the coming into operation of that Article 62; and
- (c) any furnace the installation of which was begun after the date of the coming into operation of that Article 62 and which replaces a furnace which had a smaller combustion space.

F14 . . . .

(11) In this Article “exempted boiler or plant” means a boiler or plant which is used or to be used wholly for any prescribed purpose, and references to the applicant shall, in a case where the original applicant notifies the district council that his interest in the application has been transferred to another person, be construed as references to that other person.

F13 prosp. rep. by [1997 NI 18](#)  
 F14 [1992 NI 1](#)

### **Application to fumes of certain provisions as to grit and dust**

16. The Department may by regulations—

- (a) apply all or any of the provisions of Articles<sup>F15</sup> 7, 9, 10, 26(3), 27(4) and 29(1) (provisions relating to grit and dust) to fumes as they apply to grit and dust; and
- (b) apply all or any of the provisions of Article 5 (requirement that new furnaces shall be so far as practicable smokeless) to fumes as they apply to smoke;

subject, in either case, to such exceptions and modifications as the Department thinks expedient.

F15 prosp. rep. by [1997 NI 18](#)

## 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)<sup>F16</sup> 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.

[<sup>F17</sup>(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.

[<sup>F18</sup>(7)<sup>F16</sup> 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).

**F16** mod. by SR 1999/289

**F17** 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

**F18** 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.

Smoke nuisances

**Abatement of smoke nuisances**

<sup>F19</sup>23. ....

**F19** Art. 23 repealed (1.4.2012) by [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011](#) (c. 23), s. 78, [Sch. 4 Pt. 5](#); S.R. 2012/13, art. 2(2), Sch. 2



### **New building over-reaching adjacent chimneys**

**24.**—(1) Where after the date of the coming into operation of Article 62 of the Pollution Control and Local Government (Northern Ireland) Order 1978

- (a) any person erects or raises a building (in this Article referred to as the “taller building”) to a greater height than an adjoining building, and
- (b) any chimneys or flues of an adjoining building are in a party wall between the two buildings or are<sup>[F20</sup> 1.83 metres] or less from the nearest part of the taller building,

the district council may by notice in writing—

- (i) require that person, within such time as may be specified in the notice, to build up those chimneys and flues, if it is reasonably practicable so to do, so that the top of them will be of the same height as the top of the chimneys of the taller building or the top of the taller building, whichever is the higher, and
- (ii) require the owner or occupier of the adjoining building to allow the first-mentioned person to enter on that building and carry out such work as may be necessary to comply with the notice served on him;

so, however, that, if the owner or occupier, within fourteen days from the date of service of the notice on him, serves on the first-mentioned person and on the district council a notice (in this Article referred to as a “counter-notice”) that he elects to carry out the work himself, the owner or occupier shall comply with the notice served under sub-paragraph (i) instead of the first-mentioned person and may recover the expenses reasonably incurred in so doing from that person.

(2) Any person on whom a notice is served under paragraph (1)(i) or (ii) may appeal to a court of summary jurisdiction.

(3) If—

- (a) any person on whom a notice is served under paragraph (1)(i) fails to comply with the notice, except in a case where the owner or occupier of an adjoining building has refused to allow entry on that building, or has refused to allow the carrying out of any such work as may be necessary to comply with the notice, or has served a counter-notice, or
- (b) any person on whom a notice is served under paragraph (1)(ii) fails to comply with the notice or, having served a counter-notice, fails to comply with the notice served under paragraph (1)(i),

he shall be guilty of an offence; and the district council may itself carry out such work as may be necessary to comply with the notice served under paragraph (1)(i), and recover the expenses reasonably incurred in so doing from the person on whom that notice was served.

**F20** SR 1994/192

### **[F21F22]Relation to Industrial Pollution Control (Northern Ireland) Order 1997**

**24A.**—(1) Articles 3 to 24 shall not apply to any process which is a prescribed process as from the date which is the determination date for that process.

(2) The “determination date” for a prescribed process is—

- (a) in the case of a process for which an authorisation is granted, the date on which the enforcing authority grants it, whether in pursuance of the application or, on an appeal, of a direction to grant it;
- (b) in the case of a process for which an authorisation is refused, the date of the refusal or, on an appeal, of the affirmation of the refusal.

(3) In this Article “authorisation”, “enforcing authority” and “prescribed process” have the meaning given in Article 2 of the Industrial Pollution Control (Northern Ireland) Order 1997 and the reference to an appeal is a reference to an appeal under Article 15 of that Order.]

**F21** 1997 NI 18  
**F22** prosp. rep. by 2002 NI 7

#### Special cases

#### [<sup>F23</sup>Relation to Environment (Northern Ireland) Order 2002

**24B.**—(1) Where an activity is subject to regulations under Article 4 of the Environment (Northern Ireland) Order 2002 (regulation of polluting activities), Articles 3 to 24A shall not apply in respect of that activity, as from the determination date for the activity in question.

(2) The determination date, for an activity, is—

- (a) in the case of an activity for which a permit is granted, the date on which it is granted, whether in pursuance of an application or following an appeal;
- (b) in the case of an activity for which a permit is refused, the date of refusal, whether in pursuance of an application or following an appeal.

(3) In paragraph (2) “permit” means a permit under regulations under Article 4 of the Environment (Northern Ireland) Order 2002 and the reference to an appeal is a reference to an appeal under those regulations.]

**F23** SR 2003/46

#### Relation to, and amendment of, Alkali Act

**25** <sup>F24</sup>.—(1) This Article applies to—

- (a) so much of any work registered under section 9 of the Alkali, &c. Works Regulation Act 1906 (in this Article referred to as “the Alkali Act”) as is directly concerned in the processes which necessitate its registration under that section;
- (b) so much of any work in the course of erection or alteration as respects which the Department is satisfied that, on the completion of the erection or alteration, it would be directly concerned in processes which would necessitate its registration under that section 9.

(2) The Department may determine how much of any work of the kind referred to in paragraph (1) is or, as the case may be, would be directly concerned in the processes referred to in that section 9, and the determination of the Department shall, until revoked or varied by the Department, be conclusive.

(3) Subject to this Article, Articles 3 to 24 shall not apply to any works to which this Article applies.

(4) The Alkali Act shall have effect in relation to smoke, grit and dust from any works to which this Article applies as it has effect in relation to noxious or offensive gases, and references in that Act to noxious or offensive gases shall be construed accordingly.

(5) Paragraph (3) shall not affect the operation of Article 3, [<sup>F25</sup>or 7] in relation to works to which this Article applies, but a district council shall not, without the consent of the Department, institute in relation to such works proceedings under—

- (a) Article 3, [<sup>F25</sup>or 7], or

[<sup>F26</sup>(b) Part 7 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011.]

(6) Where it is proposed—

- (a) to alter any work of the kind referred to in paragraph (1)( a) so as to affect the processes which necessitate its registration; or
- (b) to carry out any erection or alteration of the kind referred to in paragraph (1)( b);

no such alteration or, as the case may be, erection or alteration shall take place unless notice of the proposal has been given to the Department.

(7) Any person who alters any work or carries out any erection or alteration in contravention of paragraph (6) or on whose instructions any work is so altered or any erection or alteration is so carried out shall be guilty of an offence.

(8) If, on the application of the district council, the Department is satisfied that in all the circumstances it is expedient so to do, the Department may by order apply the provisions of this paragraph to the whole or any specified part of any works to which this Article applies, and, in that event, in relation to any period for which the order is in force—

- (a) paragraphs (3) to (7) shall not apply to the works or, as the case may be, to the specified part of the works; but
- (b) it shall be a defence to any proceedings under Article 3 in respect of dark smoke from the works or, as the case may be, from the specified part of the works, to prove that the best practicable means had been employed to prevent or minimise the emission of dark smoke from the works; <sup>F27</sup> ...

<sup>F27</sup>(c) .....

(9) The Department may by order made subject to affirmative resolution—

- (a) vary or add to the list of noxious or offensive gases mentioned in section 27 of the Alkali Act;
- (b) vary or add to the list of works mentioned in Schedule 1 to the Alkali Act.

(10) Before making any order under paragraph (9) the Department may cause local or other inquiries to be held or investigations to be made.

(11) Any order made under paragraph (9) may prescribe the qualifications subject to which section 7(1) of the Alkali Act (prevention of discharge of noxious or offensive gas in scheduled works) shall apply in relation to—

- (a) any noxious or offensive gas; or
- (b) any works;

included in such order.

(12) Where, by virtue of an order under paragraph (9), works of any description which would not otherwise be included in Schedule 1 to the Alkali Act become included in that Schedule, the references in the proviso to section 9(5) of the Alkali Act (registration of works) to the commencement of that Act shall, in relation to works of that description, be construed as references to the coming into operation of the order.

(13) Where the Department is of opinion that any work is of such character as is likely to cause the evolution of any noxious or offensive gas, the Department may, notwithstanding that the provisions of the Alkali Act may not apply to that work, authorise an inspector appointed under that Act to enter and inspect such work.

(14) The provisions of the Alkali Act relating to the powers of inspectors shall, subject to paragraph (15), apply in respect of a work of the kind mentioned in paragraph (13) to any inspector authorised under that paragraph (13).

(15) Notwithstanding the provisions of this Article, the power of an inspector authorised under paragraph (14) shall not extend to authorise such an inspector to enter and inspect any work of the kind referred to in paragraph (13) in connection with the emission of smoke, grit and dust.

- F24** prosp. rep. by 1997 NI 18
- F25** Words in art. 25(5) substituted (1.4.2012) by [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011 \(c. 23\), s. 78, Sch. 3 para. 10\(1\)\(a\)](#); S.R. 2012/13, art. 2(2), Sch. 2
- F26** Art. 25(5)(b) substituted (1.4.2012) by [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011 \(c. 23\), s. 78, Sch. 3 para. 10\(1\)\(b\)](#); S.R. 2012/13, art. 2(2), Sch. 2
- F27** Art. 25(8)(c) and preceding word repealed (1.4.2012) by [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011 \(c. 23\), s. 78, Sch. 4 Pt. 5](#); S.R. 2012/13, art. 2(2), Sch. 2

### Railway engines

**26.**—(1) Article 3 shall apply in relation to railway locomotive engines as it applies in relation to buildings but as if for the references to the occupier of the building there were substituted references to the owner of the engine.

(2) The owner of any railway locomotive engine shall use any practicable means there may be for minimising the emission of smoke from the chimney on the engine and if he fails so to do, he shall, if smoke is emitted from the chimney, be guilty of an offence.

(3) Except as provided in this Article, nothing in this Order applies to smoke or grit and dust from any railway locomotive engine.

### Vessels

**27.**—(1) Article 3 shall apply in relation to vessels in waters to which this Article applies as it applies in relation to buildings, but as if—

- (a) for the references to the occupier of the building there were substituted references to the owner of, and to the master or other officer or person in charge of, the vessel; and
- (b) references to a furnace included references to an engine of the vessel.

(2) For the purposes of this Order a vessel in any waters to which this Article applies which are not within the district of any council shall be deemed to be within the district of the council whose district includes that point on land which is nearest to the spot where the vessel is.

(3) The waters to which this Article applies are—

- (a) all waters not navigable by sea-going ships; and
- (b) all waters navigable by sea-going ships which are—
  - (i) within the seaward limits of the territorial waters adjacent to Northern Ireland; and
  - (ii) are contained within any port, harbour, river, estuary, dock, canal or other place, or at any pier or jetty.

(4) Except as provided in this Article, nothing in this Order applies to smoke or grit and dust from any vessel.

### Exemption for purposes of investigations and research

**28.**—(1) If, on application being made to it, the district council is satisfied that it is expedient so to do for the purpose of enabling investigations or research relevant to the problem of the pollution of the air to be carried out without rendering the applicant liable to proceedings brought under any of the provisions of this Order, the district council may exempt—

- (a) any chimney from the operation of Articles 3,<sup>F28</sup> 7, 17,<sup>F29</sup> ... and 26;
- (b) any furnace, boiler or industrial plant from the operation of Article 5(1);
- (c) any premises from the operation of Article 4;
- (d) any furnace from the operation of Articles 8, 9 and 11.

(2) The provisions of Schedule 1 shall apply in relation to an application to the district council for an examination under this Article.

**F28** prosp. rep. by 1997 NI 18

**F29** Word in art. 28(1)(a) repealed (1.4.2012) by [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011 \(c. 23\)](#), s. 78, [Sch. 4 Pt. 5](#); S.R. 2012/13, art. 2(2), Sch. 2

### **Crown premises, etc.**

**29.**—(1) The district council shall, where it seems to it proper so to do, report to the responsible Government department any—

- (a) emissions of dark smoke, or of grit and dust, from any premises which are under the control of any Government department and are occupied for the public service of the Crown or for any of the purposes of any Government department; or
- (b) emissions of smoke, whether dark smoke or not, from any such premises which are within a smoke control area; or
- (c) emissions of smoke, whether dark smoke or not, from any such premises which appear to the council to constitute a nuisance to any of the inhabitants of the neighbourhood; or
- (d) emissions of dark smoke from—
  - (i) any vessel of Her Majesty's navy; or
  - (ii) any Government ship in the service of the Admiralty while employed for the purposes of Her Majesty's navy;

which appear to the council to constitute a nuisance to any of the inhabitants of the neighbourhood.

(2) On receiving any report under paragraph (1) the responsible Government department shall inquire into the circumstances and, if the inquiry reveals that there is cause for complaint, shall employ all practicable means for preventing or minimising the emission of the smoke or grit and dust, or, as the case may be, abating the nuisance and preventing a recurrence of it.

(3) The fact that there subsists in any premises an interest—

- (a) belonging to Her Majesty in right of the Crown; or
- (b) belonging to a Government department; or
- (c) held in trust for Her Majesty for the purposes of a Government department;

shall not affect the application of this Order to those premises so long as that interest is not the interest of the occupier of the premises, and this Order shall have effect accordingly in relation to the premises and that and all other interests in the premises.

(4) Article 27 shall, with the omission of the reference in paragraph (1) of that Article to the owner, apply to vessels owned by the Crown other than—

- (a) vessels of Her Majesty's navy;
- (b) Government ships in the service of the Admiralty while employed for the purposes of Her Majesty's navy.

(5) This Order shall have effect in relation to premises occupied for the service of a visiting force as if the premises were—

- (a) premises occupied for the public service of the Crown; and
- (b) under the control of the Government department by arrangement with whom the premises are occupied.

(6) In this Article—

“Crown” includes the Crown in right of Her Majesty's Government in the United Kingdom;

“Government department” includes a department of the Government of the United Kingdom;

“Government ship” has the same meaning as in<sup>F30</sup> the Merchant Shipping Act 1995];

“visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952 .

**F30** 1995 c. 21

#### Miscellaneous

#### Heating and cooking arrangements in buildings

**30.**—(1) Requirements may be prescribed as to the provision in buildings of such arrangements for heating or cooking as are calculated to prevent so far as practicable the emission of smoke.

(2) Any regulations made under paragraph (1) shall be deemed to be regulations made in accordance with the provisions of the Building Regulations (Northern Ireland) Order 1979 and shall take effect accordingly.

#### Powers of district councils as to research and publicity

**31.** A district council may—

- (a) arrange for the delivery of lectures and addresses, and the holding of discussions, on the problem of the pollution of the air;
- (b) arrange for the display of pictures, cinematograph films or models, or the holding of exhibitions, relating to that problem; and
- (c) prepare, or join in or contribute to the cost of the preparation of, pictures, films, models or exhibitions to be displayed or held as mentioned in sub-paragraph ( b).

#### Power of county court to authorise works and order payments

**32.**—(1) If works are reasonably necessary in or in connection with a building in order to enable the building to be used without contravention of any of the provisions of this Order, the occupier of the building—

- (a) may, if by reason of a restriction affecting his interest in the building he is unable to carry out the works without the consent of the owner of the building or some other person having an estate or interest in the building and is unable to obtain that consent, apply to the county court for an order to enable the works to be carried out by him; and
- (b) may, if he considers that the whole or any part of the cost of carrying out the works should be borne by the owner of the building or some other person having an estate or interest in the building, apply to the county court for an order directing the owner or other person to indemnify him, either wholly or in part, in respect of the cost of carrying out the works;

and on an application under either sub-paragraph (a) or sub-paragraph (b) the court may make such order as may appear to the court to be just.

(2) In considering for the purposes of this Article whether any and, if so, what works are reasonably necessary, 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.

### **Recovery of expenses**

**33.**—(1) Any expenses recoverable by a district council under Article 14 or 18, together with interest on those expenses from the date on which a demand for the expenses is served on the person from whom they are recoverable, may be recovered by the district council summarily as a civil debt from that person.

(2) Where a district council claim to recover any expenses under Article 18 from a person as being the owner of the private dwelling in respect of which the expenses were incurred and that person proves that he—

- (a) is receiving the rent of the dwelling merely as agent or trustee for some other person; and
- (b) has not, and since the date of the service on him of a demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the district council;

his liability shall be limited to the total amount of the money which he so has or has had in his hands but a district council who is, or would be, debarred by this paragraph from recovering the whole of any such expenses from an agent or trustee may recover summarily as a civil debt the whole or any unpaid balance of the expenses from the person on whose behalf the agent or trustee receives the rent.

(3) In all summary proceedings by a district council under this Article for the recovery of expenses recoverable under this Order, the time within which the proceedings may be taken shall be reckoned from the date of the service of the demand.

(4) Any interest payable on expenses recoverable under this Order shall be at the same rate as is for the time being determined by the Department of Finance under section 5 of the Public Health and Local Government (Miscellaneous Provisions) Act (Northern Ireland) 1962 .

(5) In proceedings for the recovery of expenses recoverable under this Order it shall not be open to the defendant to raise any question which he could have raised on an appeal under Article 18 against a notice requiring the carrying out of adaptations.

(6) Any expenses recoverable—

- (a) under Article 14, from a person who caused a chimney to be erected, and who is the owner of the land on which the chimney is or was erected;
- (b) under Article 18, from the owner of a private dwelling;

together with interest accrued due on the expenses, shall, until recovered, be a charge on the estate or interest of the owner in the land or dwelling, so however that if the owner is merely an agent or trustee for some other person, those expenses shall be a charge on the estate in the land or dwelling of that other person, and not on that of such owner.

(7) The charge under paragraph (6) may be recovered by the same means and in the like manner in all respects as if it were a mortgage by deed created by the owner of the land or dwelling in favour of the district council, and for the recovery of it the district council may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 on mortgagees by deed.

**Suspected offences in relation to motor vehicles**

34. Where a district council reasonably suspects that a motor vehicle is so used as not to comply with any regulations made under<sup>[F31]</sup> Article 55(2)( b) of the Road Traffic (Northern Ireland) Order 1995] (smoke, fumes, vapour, sparks, ashes and grit from motor vehicles) the district council shall, in cases where it seems proper to it to do so, report the description of the vehicle, and any other circumstances which appear to the council to be relevant, to the Department and the Department shall cause the matter to be investigated.

**F31** 1995 NI 18

**Extension of Order to certain emissions**

35.—(1) Where the Department is satisfied that practicable means exist for reducing or controlling gaseous emissions from a chimney, the Department, after consultation with such organisations as appear to it to be representative of interests substantially affected, may by regulations made subject to affirmative resolution make provision for the reduction or control of such emissions.

(2) Regulations made under paragraph (1) may contain such consequential and incidental provisions, and may make such adaptations of this Order, as appear to the Department to be necessary or expedient for the purpose of giving effect to this Article.

Administration and enforcement

**Unjustified disclosures of information**

36. If any person discloses any information relating to any trade secret used in carrying on any particular undertaking which has been furnished to or obtained by him under this Order or in connection with the execution of this Order, he shall, unless the disclosure is made—

- (a) with the consent of the person carrying on that undertaking; or
- (b) in connection with the execution of this Order; or
- (c) for the purposes of any legal proceedings arising out of this Order or of any report of such proceedings;

be guilty of an offence.

**Duty to notify occupiers of offences**

37.—(1) If, in the opinion of a district council,—

- (a) an offence is being or has been committed under Article 3, 4 or 17; <sup>F32</sup>...
- <sup>F32</sup>(b) .....

the council shall, as soon as may be, notify—

- (i) the occupier of the premises;
  - (ii) the person having possession of the boiler or plant;
  - (iii) the owner of the railway locomotive engine; or
  - (iv) the owner or master or other officer or person in charge of the vessel;
- as the case may be, and, if the notification is not in writing, shall, before the end of the four days next following the day on which the council became aware of the offence, confirm the notification in writing.



(2) In any proceedings for an offence under Article 3, 4 or 17 it shall be a defence to prove that the provisions of paragraph (1) have not been complied with in relation to the offence, and if no such notification as is required by paragraph (1) has been given before the end of the two days or, in the case of an offence committed after the date of the coming into operation of Article 62 of the Pollution Control and Local Government (Northern Ireland) Order 1978 four days next following the day of the offence, paragraph (1) shall be deemed not to have been complied with unless the contrary is proved.

(3) A district council may arrange for the discharge of any of its functions under this Article by any of its officers.

**F32** Art. 37(1)(b) and preceding word repealed (1.4.2012) by [Clean Neighbourhoods and Environment Act \(Northern Ireland\) 2011 \(c. 23\)](#), s. 78, **Sch. 4 Pt. 5**; S.R. 2012/13, art. 2(2), Sch. 2

## Penalties

**38.**—(1) A person guilty of an offence under Article 3 shall be liable on summary conviction—

- (a) where dark smoke is emitted from a chimney of a private dwelling, to a fine not exceeding<sup>F33</sup> level 3 on the standard scale]; and
- (b) where dark smoke is emitted from any other chimney, to a fine not exceeding<sup>F33</sup> level 5 on the standard scale] or, in the case of an offence under that Article as applied by Article 27 to vessels, £1,000.

(2) A person guilty of an offence under Article 5(9), in so far as such offence is or relates to a contravention of Article 5(4), or of an offence under Article 17, or Article 25(7), shall be liable on summary conviction to a fine not exceeding<sup>F33</sup> level 3 on the standard scale].

(3) A person guilty of an offence under Article 24(3) shall be liable on summary conviction to a fine not exceeding<sup>F33</sup> level 2 on the standard scale].

(4) A person guilty of an offence under Article 36 shall be liable on summary conviction to a fine not exceeding<sup>F33</sup> level 5 on the standard scale] or to imprisonment for a term not exceeding three months or to both.

(5) A person guilty of an offence under any of the other provisions of this Order shall, subject to paragraph (6), be liable on summary conviction to a fine not exceeding<sup>F33</sup> level 5 on the standard scale].

(6) Where a person is convicted of an offence under this Order (not being any of the offences mentioned in paragraph (1), (2) or (4) or an offence under Article 12) and it is shown to the satisfaction of the court that the offence was substantially a repetition or continuation of an earlier offence by him after he had been convicted of the earlier offence, he shall be liable, on summary conviction, to a fine not exceeding—

- (a) <sup>F33</sup>level 5 on the standard scale]; or
- (b) £50 for every day on which the earlier offence has been so repeated or continued by him within the three months next following his conviction for it;

whichever is the greater.

(7) Where—

<sup>F34</sup>(a) .....

- (b) under paragraph (6) a person would, if convicted, be liable to a daily penalty in respect of a continuing or repeated offence;

the court by which he is convicted of the earlier offence may fix a reasonable period from the date of conviction for compliance by the defendant with any directions given by the court and, where a court has fixed such a period, the daily penalty shall not be recoverable in respect of any day before the expiration of that period.

**F33** 1984 NI 3

**F34** Art. 38(7)(a) repealed (1.4.2012) by Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (c. 23), s. 78, Sch. 4 Pt. 5; S.R. 2012/13, art. 2(2), Sch. 2

### Enforcement

**39.**—(1) The district council shall enforce the provisions of this Order, but nothing in this Article shall be construed as extending to the enforcement of—

- <sup>F35</sup>(a) any of the provisions of the Alkali, &c. Works Regulation Act 1906 ; or
- (b) any building byelaws.

(2) A district council may institute proceedings for an offence under Article 3 where any smoke affects any part of its district notwithstanding that the smoke is emitted from a chimney outside its district.

**F35** prosp. rep. by 1997 NI 18

### Application of Public Health Acts (Northern Ireland) 1878 to 1962

**40.**—(1) For the purposes of any functions conferred on district councils by this Order, the provisions of the Public Health Acts (Northern Ireland) 1878 to 1962, other than—

- (a) section 288 of the Public Health (Ireland) Act 1878 (saving for mines, etc.); and
- (b) section 32 of the Public Health (Ireland) Act 1896 (saving in respect of buildings, etc., vested in the Crown);

shall so far as applicable have effect in relation to a district council as if the provisions of this Order (other than the provisions amending the Alkali, &c. Works Regulation Act 1906) were provisions of that Act of 1878.

(2) [<sup>F36</sup>Paragraphs 2 to 4 of Schedule 2 to the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (power to enter premises) shall apply for the purposes of any functions conferred by this Order on district councils] subject to the following modifications and to any other necessary modifications consequential on those modifications, that is to say, that the purposes for which the power of entry may be exercised shall include the purposes of—

- (a) enforcing the provisions of this Order enforceable by a district council;
- (b) exercising any of the powers of the council under this Order;
- (c) ascertaining whether there is or has been on, or in connection with, the premises any contravention of any of the provisions so enforceable; or
- (d) ascertaining whether any of the powers of the council under this Order ought to be exercised;

but—

- (i) that section shall not, except for the purposes of Article 18(3) or (10), apply in relation to any premises being a private dwelling; and
- (ii) admission to any premises (except a factory within the meaning of the Factories Act (Northern Ireland) 1965 or any other premises in which persons are employed otherwise than in domestic

service) shall not be demanded as of right unless twenty-four hours' notice of the intended entry has been given to the occupier.

<sup>F37</sup>(3) .....

<p><b>F36</b> Words in art. 40(2) substituted (1.4.2012) by <a href="#">Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (c. 23)</a>, s. 78, <b>Sch. 3 para. 10(2)</b>; S.R. 2012/13, art. 2(2), Sch. 2</p> <p><b>F37</b> Art. 40(3) repealed (1.4.2012) by <a href="#">Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 (c. 23)</a>, s. 78, <b>Sch. 4 Pt. 5</b>; S.R. 2012/13, art. 2(2), Sch. 2</p>
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**Powers of district councils to act jointly**

**41.**—(1) Two or more district councils may combine for the purpose of declaring an area to be a smoke control area and in that event—

- (a) the smoke control area may be the whole of, or any part of, the districts of those councils;
- (b) the references in Article 17 and Schedule 2, and the first reference in Article 18(1), to the district council shall be construed as references to the district councils acting jointly;
- (c) the reference in Schedule 2, paragraph 2, to a place in the district of the council shall be construed as a reference to a place in each of the districts of the councils; but
- (d) except as mentioned in sub-paragraphs ( a ) to ( c ) the references in this Order to the district council shall, in relation to a building or dwelling, or to a boiler or industrial plant, in the smoke control area, be construed as references to that one of the district councils within whose district the building, dwelling, boiler or plant is situated.

(2) Any district council may, subject to the approval of the Department, concur with any other district council or councils in appointing a joint committee of those councils for any of the purposes of this Order which in the opinion of those councils could be carried out by a joint committee more effectually than by separate councils.

(3) The provisions of this Order with respect to the functions of district councils shall, with such modifications as the Department may approve apply to a joint committee appointed under paragraph (2).

(4) The power exercisable by a district council under paragraph (2) to concur with other councils in appointing a joint committee shall include power to appoint a joint committee which includes persons who are not members of the appointing councils, but any committee which includes such persons by virtue of this paragraph shall be advisory only and functions under this Order shall not be exercised by it.

**Premises in two or more districts**

**42.** Any premises which extend into the districts of two or more district councils shall be treated for the purposes of this Order as being wholly within such one of those districts as may be agreed upon by those councils<sup>F38</sup> . . .

<b>F38</b> 1985 NI 15
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General

**Notices and regulations**

**43.**—(1) The Department may prescribe the form of any notice or other document to be used for the purposes of this Order.

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**Changes to legislation:** There are currently no known outstanding effects for the Clean Air (Northern Ireland) Order 1981. (See end of Document for details)

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(2) Subject to Articles 21,<sup>F39</sup> 25(9) and 35(1), regulations shall be subject to negative resolution.

**F39** prosp. rep. by [1997 NI 18](#)

#### **Transitional provision, saving, amendments and repeals**

**44.**—(1) The transitional provision and saving in Schedule 3 shall have effect.

*Para.(2), with Schedule 4, effects amendments*

*Para.(3), with Schedule 5, effects repeals*

**Changes to legislation:**

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