

FIRE AND RESCUE SERVICES (NORTHERN IRELAND) ORDER 2006

S.I. 2006 No. 1254 (N.I. 9)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety (the Department) in order to assist the reader in understanding the Fire and Rescue Services (Northern Ireland) Order 2006. The Memorandum does not form part of the Order, but should be read in conjunction with it.

BACKGROUND AND POLICY OBJECTIVES

2. The Order will give effect to many of the proposals outlined in the Department's policy consultation paper, *Northern Ireland's Fire and Rescue Service*, published in 2004, and will take account of recommendations from the independent Quinquennial Review of the Fire Authority for Northern Ireland (FANI), completed in 2003, and of developments in Great Britain arising from *The Independent Review of the Fire Service* led by Sir George Bain in 2002. As well as introducing changes to fire and rescue services in Northern Ireland, the Order will reform fire safety legislation in line with increased emphasis on fire prevention. It will replace the Fire Services (Northern Ireland) Order 1984 and will reflect broadly the legislative changes introduced in England and Wales, through the Fire and Rescue Services Act 2004 and the Regulatory Reform (Fire Safety) Order 2005, and in Scotland, through the Fire (Scotland) Act 2005.
3. The policy objectives of the Order are:
 - To define the role and structure of the modern fire and rescue service;
 - To provide a statutory basis for core duties such as promoting community fire safety, fire fighting, responding to road traffic accidents and other emergencies, and enforcing new fire safety requirements;
 - To simplify existing fire safety legislation and reinforce the modern risk-based approach to fire prevention;
 - To give effect to European Union Directives relating to health and safety at work.

FINANCIAL EFFECTS OF THE ORDER

4. The provisions in the Order will not have any significant bearing on the existing costs associated with the fire and rescue service. By defining the core duties, the Order will not place new burdens on the Service. Rather, it will give statutory expression to existing services, which are carried out within the existing financial provision. Further, the new fire safety regime will relieve the Service of the obligations surrounding fire certification and this should free up staff resources for redeployment elsewhere within the service.

EUROPEAN CONVENTION ON HUMAN RIGHTS

5. The provisions of the Order are compatible with the Convention on Human Rights.

EQUALITY

6. The Department, in screening the implications of its proposals on equality, opened up the issues for discussion as part of its policy consultation and responses were invited from representatives of the Section 75 groups. The consultation has shown that there is recognition of the positive implications of the proposals for equality and there has been no indication that any of the proposed legislative provisions will create problems for any of the groups. The Department will also consider conducting Equality Impact Assessments when exercising its powers in the Order to make subordinate legislation, including the provision in Article 14. In progressing the elements of the wider modernisation programme, which are not provided for in the Order, including the workforce changes and Integrated Risk Management Planning, FANI will assess the equality impacts as appropriate.

SUMMARY OF THE REGULATORY APPRAISAL

7. The Department has considered the regulatory impact of the provisions in the Order in light of both the Office of the Deputy Prime Minister's assessment in respect of its Regulatory Reform (Fire Safety) Order 2005 and of the responses to the policy consultation.
8. The proposed new fire safety regime has implications as regards regulatory impact. The removal of the certification scheme and the designation of a responsible person mean that employers, and virtually all those responsible for non-domestic premises, will be affected. They will need to familiarise themselves with the requirements of the new legislation, including the assessment of fire risks within their premises. The associated cost will, however, be offset by relieving employers and businesses of the initial cost required by the old fire certification scheme. Moreover, the main aim of the reform is to reduce the administrative burdens presently on employers and businesses by streamlining the legislative requirements and replacing the existing system, which consists of multiple, overlapping general fire safety regimes and enforcing authorities.

MAIN ELEMENTS OF THE ORDER

9. The Order is in six parts. Part I sets out the title and commencement dates and includes general interpretation provisions. Part II, which comprises 6 chapters, provides for the establishment of the Northern Ireland Fire and Rescue Service Board (NIFRSB). It also gives a statutory basis for core functions that have not previously been given legal effect and contains Articles relating to other powers of the Board, charging for fire and rescue services, water supplies, powers of fire and rescue officers and false alarms. Part III, which comprises 5 chapters, sets out the fire safety provisions, including the duties on employers, persons responsible for relevant premises and employees, the regulatory powers of the Department, enforcement arrangements, and offences relating to the new fire safety duties. Part IV covers the functions of the Department in relation to the new fire and rescue service arrangements and Part V contains supplementary provisions, including an offence in respect of assaults on fire and rescue officers. Part VI makes general provisions in respect of subordinate legislation, amendments and repeals. Schedule 1 sets out detailed arrangements for the operation of the Board and Schedule 2 provides for the transfer of functions etc from FANI to the Board. Amendments and repeals of other legislation are set out in Schedule 3 and Schedule 4 respectively.

COMMENTARY ON ARTICLES

Article 1 cites the title of the Order and empowers the Department to bring the provisions into operation by commencement order.

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Article 2 applies the Interpretation Act (Northern Ireland) 1954 to the Order and defines other terms.

Article 3 provides for the establishment of NIFRSB and the dissolution of its predecessor, FANI.

Articles 4 to 7 set out the core functions of NIFRSB in relation to promoting fire safety and responding to fires, road traffic accidents and other emergencies. Although these have been part of the routine functions of the fire service for some time, the Order codifies them as core functions in one comprehensive statute for the first time. **Article 7** allows the Department to confer on NIFRSB specified functions relating to emergencies other than fires or RTAs. These would include emergencies relating to chemical spills, flooding and other search and rescue incidents.

Article 8 gives NIFRSB discretion to equip for, and respond to, other eventualities, beyond its core functions as defined elsewhere in the Order, where there is a risk to life or to the environment.

Article 9 empowers NIFRSB to cooperate and make arrangements with persons outside Northern Ireland who carry out functions that correspond to those of the Board or of the Department.

Article 10 provides for general powers of NIFRSB, including the power to use fire and rescue officers, appliances or equipment for any other purpose that the Board considers appropriate.

Article 11 provides for acquisition and disposal of land by NIFRSB.

Article 12 empowers NIFRSB to make arrangements for others to assist with the functions covered in **Articles 4 to 8** and **33**, save for the caveat that arrangements for assisting with fighting fires can be made only with organisations that employ their own fire-fighters.

Article 13 empowers NIFRSB to delegate any of its functions conferred in **Articles 4 to 8** and **33** to others, save for the caveat that its fire-fighting functions can be delegated only to organisations that employ their own fire-fighters.

Article 14 allows the Department to set out by order, following consultation, the services for which NIFRSB may charge and the persons who may be subject to the charge. However, the Board will not be able to charge for extinguishing fires or protecting life and protecting life and property in the event of fires, unless the incidents are outside Northern Ireland or at sea.

Articles 15 & 16 deal with the supply of water and the specified purposes for which it can be used by NIFRSB.

Article 17 provides that NIFRSB shall make arrangements for the provision and maintenance of fire hydrants, and includes offences relating to their misuse.

Article 18 provides fire and rescue officers with powers, including the power to enter premises and to close roads or regulate traffic, necessary for the purposes of fighting fires, rescuing people from road traffic accidents, carrying out functions in relation to other emergencies and for preventing or limiting damage to property in any of these circumstances.

Articles 19 to 22 provide authorised fire and rescue officers with powers, including the power to enter premises, for the purpose of obtaining information needed for the discharging the core functions under **Articles 5 to 7** and for the purposes of investigating the cause of fires. **Article 22** establishes an offence and related penalty where persons present on the premises fail to comply with requirements to provide facilities, information or other assistance.

Article 23 provides for an offence of knowingly giving NIFRSB a false alarm, and details the related penalties.

Article 24 defines terms in Part II, including the term “emergency”.

Articles 25 to 28 provide for the duties of employers, persons responsible for relevant premises and employees under the new fire safety regime.

Articles 29 to 31 provide for the Department to make regulations in relation to risk assessments and fire safety.

Article 32 disapplies fire safety duties when necessary to ensure certain persons can carry out their duties.

Article 33 confers functions on NIFRSB in relation to enforcing the fire safety duties of the new fire safety regime.

Articles 34 & 35 set out the powers afforded to fire and rescue officers who are authorised to carry out the enforcement duties in relation to the new fire safety regime.

Articles 36 to 38 provide for NIFRSB to issue prohibition, enforcement and alterations notices relating to the new fire safety regime.

Article 39 provides for a right of appeal to the county court within 21 days of a prohibition, enforcement or alterations notice being served.

Article 40 provides for the determination of disputes.

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Articles 41 to 44 set out the offences and penalties relating to circumstances where persons fail to comply with the requirements of the new fire safety regime.

Articles 45 to 49 cover miscellaneous and general provisions, including a prohibition on charging employees, the restriction of the application of the Health and Safety at Work (NI) Order 1978, licensing matters and application of the Order to the Crown.

Articles 50 & 51 define the meaning of “relevant premises” and “fire safety measures”.

Article 52 defines terms included in Part III.

Article 53 requires the Department to prepare a document setting out priorities and objectives, guidance and other matters for NIFRSB in connection with the carrying out of its functions.

Articles 54 to 56 provide the Department with various powers, including the power to appoint inspectors and the power to give directions to the Board as to the carrying out by the Board of any of its functions.

Article 57 provides for an offence of assaulting or obstructing a fire and rescue officer or a person assisting a fire and rescue officer or a person assisting NIFRSB under Article 12 or undertaking functions of NIFRSB under Article 13. This offence, and the related penalties, corresponds to the offence in Section 66 of the Police (Northern Ireland) Act 1998 dealing with assaults on police constables.

Article 58 provides for a prohibition on the employment of a member of a police force as a fire and rescue officer, which is in line with the new legislation in GB.

Article 59 provides for the preservation of existing pension schemes.

Articles 60 to 62 make general provision in relation to orders and regulations, and introduce Schedules 3 (amendments) and 4 (repeals).

Schedule 1 sets out detailed arrangements for the operation of NIFRSB, such as its status, constitution, remuneration, staffing, procedures, finance, and annual reports.

Schedule 2 provides for the transfer of functions, assets, liabilities and staff from FANI to NIFRSB.

Schedules 3 & 4 list amendments and repeals of other primary legislation.