

*PROPOSAL FOR A DRAFT ORDER IN COUNCIL UNDER PARAGRAPH 1 OF SCHEDULE 1 TO THE NORTHERN IRELAND ACT 1974*

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DRAFT STATUTORY INSTRUMENTS

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**1998 No. (N.I. )**

**NORTHERN IRELAND**

**Health and Safety at Work (Amendment)  
(Northern Ireland) Order 1998**

*Made - - - -  
Coming into operation on days to be appointed under  
Article 1(2)*

At the Court at , the day of 1998  
Present,  
The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:  
Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**Title and commencement**

1.—(1) This Order may be cited as the Health and Safety at Work (Amendment) (Northern Ireland) Order 1998.

(2) This Order shall come into operation on such day or days as the Department may by order appoint.

(3) An order under paragraph (2) may make such transitional provision as appears to the Department to be necessary or expedient in connection with the provisions brought into operation by the order.

**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—

- “the Department” means the Department of Economic Development;  
“the Executive” means the Health and Safety Executive for Northern Ireland;  
“the principal Order” means the Health and Safety at Work (Northern Ireland) Order 1978.

### **The Health and Safety Executive for Northern Ireland**

3.—(1) The body corporate established by Article 12 of the principal Order with the name of the Health and Safety Agency for Northern Ireland shall be known instead as “the Health and Safety Executive for Northern Ireland”.

(2) In Article 12 of the principal Order (establishment of the Executive)—

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

“(2A) The Head of the Department may appoint one of the members to be deputy chairman of the Executive.”;

(b) after paragraph (4) there shall be added—

“(5) The functions of the Executive, and of its officers and servants, shall be performed on behalf of the Crown.

(6) For the purpose of any civil proceedings arising out of those functions, the Crown Proceedings Act 1947 shall apply to the Executive as if it were a Department of Her Majesty’s Government in Northern Ireland within the meaning of that Act.

(7) The Department may by order subject to negative resolution amend paragraph (1) so far as it regulates the number of members of the Executive.”.

### **Functions of the Executive**

4. For Article 13(1) of the principal Order (functions of the Executive) there shall be substituted—

“(1) In addition to the other functions conferred on the Executive under this Order, but subject to paragraph (4), it shall be the general duty of the Executive to do such things and make such arrangements as it considers appropriate for the general purposes of this Part.

(1A) It shall be the duty of the Executive—

- (a) to assist and encourage persons concerned with matters relevant to any of the general purposes of this Part to further those purposes;
- (b) to make such arrangements as it considers appropriate for securing that government departments, employers, employees, organisations representing employers and employees respectively, and other persons concerned with matters relevant to any of those purposes are provided with an information and advisory service and are kept informed of, and adequately advised on, such matters;
- (c) to submit to the Department concerned such proposals as the Executive considers appropriate for the making of regulations under any of the relevant statutory provisions.”.

### **The Employment Medical Advisory Service**

5. In Article 48 of the principal Order (the employment medical advisory service)—

(a) in paragraph (1)—

(i) for “Department” in the first place where it occurs there shall be substituted “Executive”;

(ii) in sub-paragraph (a), the words “the Agency” shall be omitted;

- (b) in paragraph (2)(b) the words “the Agency and” shall be omitted;
- (c) in paragraph (3)—
  - (i) after “The” where it first occurs there shall be inserted “Executive with the consent of the”;
  - (ii) the words from “and may appoint” onwards shall be omitted;
- (d) in paragraphs (5) and (7) for “Department” wherever it occurs there shall be substituted “Executive with the consent of the Department”;
- (e) in paragraph (6)—
  - (i) for “Department” in the first and second places where it occurs there shall be substituted “Executive”;
  - (ii) after “Department” in the third place where it occurs there shall be inserted “and the Department”.

### **Amendments and repeals**

6.—(1) The statutory provisions set out in Schedule 1 shall have effect subject to the amendments specified in that Schedule, being minor amendments and amendments consequential upon the provisions of this Order.

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

Clerk of the Privy Council

## SCHEDULES

### SCHEDULE 1

Article 6(1).

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *The Petroleum (Consolidation) Act (Northern Ireland) 1929 (c. 13)*

1. In section 3 (appeals from refusals to grant licences) and section 4 (fees payable for licences) for any reference to the Minister of Home Affairs there shall be substituted a reference to the Executive.

2. In section 23(1) (interpretation)—

(a) after the definition of “dock” insert—

““Executive” means the Health and Safety Executive for Northern Ireland established under Article 12 of the Health and Safety at Work (Northern Ireland) Order 1978;”;

(b) in the definition of “petroleum-spirit licence” for “Minister of Home Affairs” substitute “Executive”.

##### *The Petroleum (Transfer of Licences) Act (Northern Ireland) 1937 (c. 4)*

3. In section 1 (transfer of petroleum-spirit licences) for “Ministry of Home Affairs” where it twice occurs substitute “Health and Safety Executive for Northern Ireland”.

##### *The Radiological Protection Act 1970 (c. 46)*

4. In section 1(9) and (10) (establishment and functions of the National Radiological Protection Board) for “Agency” wherever it occurs substitute “Executive”.

##### *The Employer’s Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972 (NI 6)*

5. In Article 8(2)(b) (production of certificates of insurance on demand by inspector) for “Ministry” substitute “Health and Safety Executive for Northern Ireland”.

##### *The House of Commons Disqualification Act 1975 (c. 24)*

6. In Part III of Schedule 1 (offices the holders of which are disqualified) insert at the appropriate place in alphabetical order—

“Chairman of the Health and Safety Executive for Northern Ireland.”.

##### *The Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

7. In Part II of Schedule 1 (bodies of which all members are disqualified) insert at the appropriate place in alphabetical order—

“The Health and Safety Executive for Northern Ireland.”.

*The Health and Safety at Work (Northern Ireland) Order 1978 (NI 9)*

**8.** In the Order for “Agency”, wherever it occurs, substitute “Executive”.

**9.** In Article 2(2) (interpretation), in the definition of “enforcing authority” after “concerned” insert “, the Executive”.

**10.** In Article 13 (functions of the Executive)—

- (a) in paragraph (3) omit “, in accordance with proposals approved by the Department concerned,”;
- (b) in paragraph (4)(a) omit “under paragraphs (2) and (3)”.

**11.** In Article 15(1) (additional functions of the Executive)—

- (a) in sub-paragraph (a) after “Executive” in the first place where it occurs insert “(with or without payment)”;
- (b) after sub-paragraph (b) insert—
  - “(bb) provide (with or without payment) services or facilities required otherwise than for the general purposes of this Part in so far as they are required by any government department or other public authority in connection with the exercise by that department or authority of any of its functions;”.

**12.** In Article 16 (investigations and inquiries)—

- (a) in paragraph (1) after “concerned” insert “or the Executive”;
- (b) in paragraph (2) after “concerned” insert “or the Executive”;
- (c) in paragraph (5)—
  - (i) after “concerned” insert “or, as the case may be, the Executive”;
  - (ii) after “that Department” where it twice occurs insert “or the Executive”;
- (d) in paragraph (6)—
  - (i) after “concerned” insert “or, as the case may be, the Executive”;
  - (ii) after “that Department” where it thrice occurs insert “or the Executive”.

**13.** In Article 20 (enforcement authorities)—

- (a) in paragraph (1) after “concerned” insert “and the Executive”;
- (b) for paragraph (2) substitute—
  - “(2) Regulations may—
    - (a) make a specified authority or authorities of any specified class responsible for the enforcement of the relevant statutory provisions to such extent as may be prescribed;
    - (b) make provision for enabling responsibility for enforcing any of the relevant statutory provisions to be, to such extent as may be determined under the regulations—
      - (i) transferred from the Executive to a specified authority or from that authority to the Executive; or
      - (ii) assigned to the Executive or to a specified authority for the purpose of removing any uncertainty as to what are under this paragraph their respective responsibilities for the enforcement of those provisions;

and any regulations made in pursuance of sub-paragraph (b) shall include provision for securing that any transfer or assignment effected under the regulations is brought to the notice of persons affected by it.”.

- (c) in paragraph (4)—
  - (i) after “concerned” insert “or the Executive”;
  - (ii) in sub-paragraph (b), for the words from “, and with respect” onwards substitute “in accordance with such guidance as the Executive may give to the authority.”.

14. In Article 29(1) (obtaining of information)—

- (a) omit sub-paragraph (a);
- (b) omit “with the consent of the Department concerned”.

15. In Article 31 (offences) omit paragraph (3).

16. After Article 34 insert—

**“Offences by bodies corporate**

**34A.** For the purposes of this Part section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.”.

17. In Article 41(1) (representations in connection with licensing provisions) for “of Schedule 4” substitute “prescribed by order under Article 10 of the Deregulation and Contracting Out (Northern Ireland) Order 1996 (model provisions with respect to appeals).”.

18. In Article 46 (regulations under the relevant statutory provisions)—

- (a) in paragraph (1)—
  - (i) for “recommendations” where it thrice occurs substitute “proposals”;
  - (ii) for “(1)(d)” substitute “(1A)(c)”;
- (b) in paragraph (2) for “recommendations” substitute “proposals”;
- (c) in paragraph (3)—
  - (i) for “recommendations” where it twice occurs substitute “proposals”;
  - (ii) for “(1)(d)” substitute “(1A)(c)”.

19. In Article 55(2) (regulations) after “Regulations” insert “and orders”.

20. In Schedule 2 (the Health and Safety Executive)—

- (1) paragraph 2 shall be omitted;
- (2) in paragraphs 4, 5, 6(1), 7, 8 and 11 after “chairman”, wherever it occurs, insert “, deputy chairman”;
- (3) in paragraph 6(2)—
  - (a) after “chairman” in the first place where it occurs insert “or deputy chairman”;
  - (b) after “chairman” in the second place where it occurs insert “or, as the case may be, deputy chairman”;
- (4) in paragraph 12 after “chairman” insert “or deputy chairman”;
- (5) for paragraph 15 substitute—

“**15.**—(1) Subject to sub-paragraph (2), the Executive with the approval of the Department and the Department of Finance and Personnel as to numbers and as to remuneration and other terms and conditions of employment—

- (a) shall appoint a chief executive to carry on and manage and control generally the administration and business of the Executive and to perform such other functions as may be determined by the Executive;
- (b) may employ such other officers and servants as the Executive considers necessary;
- (c) may employ the services of such other persons as the Executive considers expedient for any particular purpose.

(2) The first chief executive shall be appointed, and may be removed from office at any time, by the Head of the Department and each subsequent chief executive may be removed from office at any time, by the Executive with the consent of the Head of the Department.

(3) The Executive shall, in the case of the chief executive, and may, in the case of such other persons employed by it as may be determined by the Executive with the approval of the Department and the Department of Finance and Personnel, pay to or in respect of them such allowances (including allowances for expenses), pensions or gratuities, or provide and maintain for them such pension schemes (whether contributory or not), or contributory or other pension arrangements, as may be so determined.”;

(6) before paragraph 18 insert—

“**17A.**—(1) The Executive shall prepare in respect of the period ending on 31st March 2000 and in respect of each subsequent financial year a report on the Executive’s activities during that period or year (“the annual report”).

(2) The annual report shall include a general survey of developments, during the period to which it relates, in respect of matters falling within the scope of the Executive’s functions.”;

(7) for paragraphs 18(3) to (5) and 19 substitute—

“**19.**—(1) The Executive shall, before 31st May in each year, transmit to the Department and the Comptroller and Auditor-General a document (referred to below as “the annual report and accounts of the Executive”) containing—

- (a) a copy of the annual report prepared under paragraph 17A; and
- (b) a copy, certified by the auditors, of the annual statement of accounts prepared under paragraph 18.

(2) The Comptroller and Auditor-General—

- (a) shall examine the copy of the annual statement of accounts of the Executive;
- (b) may, in connection with such examination, examine any accounts kept by the Executive and any records relating to the accounts; and
- (c) shall make a report on the copy of the annual statement of accounts and send the report to the Department.

(3) Subject to paragraph (4), a copy of—

- (a) the annual report and accounts of the Executive; and
- (b) the report of the Comptroller and Auditor-General under sub-paragraph 2(c),

shall be laid by the Department before the Assembly.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: Health and Safety at Work (Amendment) (Northern Ireland) Order 1998 No. 2795

(4) During the interim period (as defined in section 1(4) of the Northern Ireland Act 1974) the copies mentioned in sub-paragraph (3) shall, instead, be sent by the Department to the Secretary of State and laid by him before Parliament.

(5) The Department or, where sub-paragraph (4) applies, the Secretary of State shall cause the annual report and accounts of the Executive to be published.”.

*The Fire Services (Northern Ireland) Order 1984 (NI 11)*

**21.** In Article 49 (application to the Crown)—

- (a) in paragraphs (3), (4) and (5) for “Department of Economic Development” wherever it occurs substitute “Health and Safety Executive for Northern Ireland”;
- (b) in paragraph (4) for “that Department” where it thrice occurs substitute “the Executive”.

*The Planning (Northern Ireland) Order 1991 (NI 11)*

**22.** In Article 54(4)(b) (applications for hazardous substances consent) and Article 62(3) (emergencies) for “Department of Economic Development” substitute “Health and Safety Executive for Northern Ireland”.

**23.** In Article 63 (health and safety requirements)—

- (a) in paragraph (2) for “Department of Economic Development” substitute “Health and Safety Executive for Northern Ireland”;
- (b) in paragraphs (3) and (4) for “that Department” substitute “the Executive”.

*The Cinemas (Northern Ireland) Order 1991 (NI 12)*

**24.** In Article 8 (other non-commercial exhibitions)—

- (a) in paragraphs (6) and (7) for “Department” in the first place in each of those paragraphs where it occurs substitute “Health and Safety Executive for Northern Ireland” and in every other place in each of those paragraphs where it occurs substitute “Executive”;
- (b) in paragraph (7) for “it” substitute “the Department”.

*The Environment and Safety Information (Northern Ireland) Order 1993 (NI 14)*

**25.—**(1) In Article 5(3) (protection of trade secrets, etc.)—

- (a) for “Schedule 2” substitute “the provisions prescribed by order under Article 10 of the Deregulation and Contracting Out (Northern Ireland) Order 1996 (model provisions with respect to appeals)”;
- (b) omit the words from “and on any such appeal” onwards.

(2) Omit Schedule 2.

*The Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7)*

**26.** In Schedule 2 (bodies subject to investigation) at the appropriate place in alphabetical order insert—

“The Health and Safety Executive for Northern Ireland”.

*The Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19)*

27. In Article 8 (grant of licences)—

(a) in paragraph (5)—

(i) in sub-paragraph (a) for “such” substitute “the Health and Safety Executive for Northern Ireland and to such other”;

(ii) in sub-paragraph (b) after “which” insert “the Executive or”;

(b) in paragraph (8)—

(i) after “allowed to” insert “the Executive or”;

(ii) for “body” in the second and third place where it occurs substitute “Executive, the body”.

28. In Article 10(4)(b) (variation of licences) after “affect” insert “the Health and Safety Executive for Northern Ireland or”.

*The Activity Centres (Young Persons' Safety) (Northern Ireland) Order 1998 (NI 00)*

29. In the Order for “Agency” wherever it occurs substitute “Executive”.

30. In Article 3(1) (adventure activities licensing) for “Department of Economic Development” substitute “Executive”.

SCHEDULE 2

Article 6(2).

REPEALS

Chapter or Number	Short title	Extent of repeal
<a href="#">1975 c. 24.</a>	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part III the entry relating to the Chairman of the Health and Safety Agency for Northern Ireland.
<a href="#">1975 c. 25.</a>	The Northern Ireland Assembly Disqualification Act 1975.	In Schedule 1, in Part II the entry relating to the Health and Safety Agency for Northern Ireland.
<a href="#">1978 NI 9.</a>	The Health and Safety at Work (Northern Ireland) Order 1978.	In Article 13, in paragraph (3) the words “, in accordance with proposals approved by the Department concerned,” and in paragraph (4)(a) the words “under paragraphs (2) and (3)”.  In Article 29(1), sub-paragraph (a) and the words “with the consent of the Department concerned”.  Article 31(3).

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Chapter or Number	Short title	Extent of repeal
		In Article 48, in paragraph (1) (a) the words “the Agency”; in paragraph (2)(b) the words “the Agency and” and in paragraph (3) the words from “and may appoint” onwards.
		In Schedule 2, paragraph 2.
		Schedule 4.
		In Schedule 6, paragraph
1993 NI 14.	The Environment and Safety Information (Northern Ireland) Order 1993.	In Article 5(3) the words from “and on any such appeal” onwards.
		Schedule 2.

### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Health and Safety at Work (Northern Ireland) Order 1978 by—

- (a) renaming the Health and Safety Agency for Northern Ireland as the Health and Safety Executive for Northern Ireland;
- (b) providing for the Executive to enforce the provisions of that Order of 1978; and
- (c) providing for the Executive to provide the Employment Medical Advisory Service.