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STATUTORY INSTRUMENTS

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**1997 No. 2779**

**The Shops (Sunday Trading &c.) (Northern Ireland) Order 1997**

*Introductory*

**Title and commencement**

1. This Order may be cited as the Shops (Sunday Trading &c.) (Northern Ireland) Order 1997 and shall come into operation on the expiration of 7 days from the day on which it is made.

**Interpretation**

2.—(1) Subject to Article 9(2), 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 commencement date” means the day on which this Order comes into operation;

“the Department” means the Department of Health and Social Services;

“intoxicating liquor” has the same meaning as in the Licensing (Northern Ireland) Order 1996;

“large shop” means a shop which has a relevant floor area exceeding 280 square metres;

“relevant floor area”, in relation to a shop, means the internal floor area of so much of the shop as consists of or is comprised in a building, but excluding any part of the shop which, throughout the week ending with the Sunday in question, is used neither for the serving of customers in connection with the sale of goods nor for the display of goods;

“retail customer” means a person who purchases goods retail;

“retail sale” means any sale other than a sale for use or resale in the course of a trade or business, and references to retail purchase shall be construed accordingly;

“sale of goods” does not include—

- (a) the sale of meals, refreshments or intoxicating liquor for consumption on the premises on which they are sold; or
- (b) the sale of meals or refreshments prepared to order for immediate consumption off those premises;

“shop” (except in Schedule 2) means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods.

*Opening of large shops on Sunday*

**Large shops not to open on Sunday except in accordance with Articles 4,5 and 6**

3.—(1) Subject to Articles 4, 5 and 6, a large shop shall not be open on Sunday for the serving of retail customers.

(2) If paragraph (1) is contravened in relation to a shop, the occupier of the shop shall be guilty of an offence and liable on summary conviction to a fine not exceeding £50,000.

(3) Where a person is charged with having contravened paragraph (1), in relation to a large shop which was permitted by virtue of the exemption conferred by paragraph (1) of Article 5 to be open for the serving of retail customers on the Sunday in question during the hours mentioned in that paragraph, by reason of his having served a retail customer after the end of those hours, it shall be a defence to prove that the customer was in the shop before that time and left not later than half an hour after that time.

#### **Exemption for certain kinds of large shop**

4.—(1) Article 3(1) does not apply in relation to—

- (a) any shop which is at a farm and where the trade or business carried on consists wholly or mainly of the sale of produce from that farm;
- (b) any shop where the trade or business carried on consists wholly or mainly of the sale of intoxicating liquor;
- (c) any shop where the trade or business carried on consists wholly or mainly of the sale of any one or more of the following—
  - (i) motor supplies and accessories; and
  - (ii) cycle supplies and accessories;
- (d) any shop which—
  - (i) is a registered pharmacy; and
  - (ii) is not open for the retail sale of any goods other than medicinal products and medical and surgical appliances;
- (e) any shop which—
  - (i) is at an airport; and
  - (ii) is situated in a part of the airport ordinarily used by persons travelling by air to or from the airport;
- (f) any shop in a railway station or bus station;
- (g) any shop at a service area within the meaning of the Roads (Northern Ireland) Order 1993;
- (h) any petrol filling station;
- (i) any shop which is not open for the retail sale of any goods other than food, stores or other necessaries required by any person for a vessel or aircraft on its arrival at, or immediately before its departure from, a port, harbour or airport; and
- (j) any stand used for the retail sale of goods during the course of an exhibition.

(2) In determining whether a shop falls within paragraph (1)(a), (b) or (c), regard shall be had to the nature of the trade or business carried on there on weekdays as well as to the nature of the trade or business carried on there on Sunday.

(3) In this Article—

“medicinal product” and “registered pharmacy” have the same meaning as in the Medicines Act 1968; and

“Stand”, in relation to an exhibition, means any platform, structure, space or other area provided for exhibition purposes.

### **Permitted Sunday opening hours for large shops**

5.—(1) Article 3(1) does not apply in relation to a shop during the period between 1 p.m. and 6 p.m. on a Sunday.

(2) The exemption conferred by paragraph (1) does not apply where the Sunday is Easter Day or Christmas Day.

### **Additional permitted Sunday opening for large shops in holiday resorts**

6.—(1) Where a notice under this Article has effect in relation to a shop, Article 3(1) does not apply in relation to the shop on any Sunday specified in the notice; and any exemption conferred by this paragraph is in addition to (and not in substitution for) the exemption conferred by Article 5(1).

(2) A person who is, or proposes to become, the occupier of a large shop situated in an area designated under paragraph (9) as a holiday resort may as respects any calendar year give notice to the district council for the district in which the shop is situated specifying (subject to paragraph (3)) the Sundays in that year on which Article 3(1) is not to apply in relation to the shop.

(3) A notice under this Article shall not specify—

- (a) a Sunday occurring before 1st March or after 30th September in any calendar year;
- (b) Easter Day; or
- (c) more than 18 Sundays in any calendar year.

(4) The occupier of a shop in respect of which notice has been given under this Article may, by a subsequent notice—

- (a) specify (subject to paragraph (3)) Sundays different to those specified in the earlier notice; or
- (b) cancel the earlier notice.

(5) A notice under this Article—

- (a) shall not take effect until the end of the period of 14 days beginning with the day on which it is given, unless the district council agrees that it is to take effect at the end of a shorter period;
- (b) shall cease to have effect when superseded by a subsequent notice as mentioned in paragraph (4)(a) or cancelled as mentioned in paragraph (4)(b).

(6) Every district council shall keep a register of shops in its district in respect of which a notice under this Article has effect.

(7) In relation to every such shop, the register shall contain particulars of—

- (a) the name (if any) and address of the shop; and
- (b) the Sundays specified in the notice under this Article.

(8) Any register kept under this Article—

- (a) shall be open to inspection by members of the public at all reasonable times; and
- (b) may be kept by means of a computer.

(9) For the purposes of this Article, a district council may by resolution—

- (a) designate any area in its district as a holiday resort;
- (b) revoke any designation made by it under sub-paragraph (a).

(10) Any resolution passed by a district council under paragraph (9) shall take effect from a date specified in the resolution which must be a date at least one month after the date on which the resolution is passed.

(11) Before making or revoking any designation under paragraph (9), a district council shall consult persons appearing to the council to be likely to be affected by the proposed designation or revocation (whether as the occupiers of shops or as local residents) or persons appearing to the council to represent such persons.

(12) Where a district council makes or revokes a designation under paragraph (9), it shall publish notice of the designation or revocation in such manner as it considers appropriate.

### **Loading and unloading at large shops on Sunday morning**

7.—(1) A district council may by resolution designate its district as a loading control district for the purposes of this Article with effect from a date specified in the resolution, which must be a date at least one month after the date on which the resolution is passed.

(2) A district council may by resolution revoke any designation made by it under this Article.

(3) Before making or revoking any designation under this Article, a district council shall consult persons appearing to the council to be likely to be affected by the proposed designation or revocation (whether as the occupiers of shops or as local residents) or persons appearing to the council to represent such persons.

(4) Where a district council makes or revokes a designation under this Article, it shall publish notice of the designation or revocation in such manner as it considers appropriate.

(5) Schedule 1 (which imposes restrictions on loading and unloading on Sunday before 9 a.m. at large shops in loading control districts) shall have effect.

### **Enforcement**

8.—(1) It shall be the duty of every district council to enforce within its district the preceding provisions of this Order.

(2) For the purposes of its duty under paragraph (1), a district council shall appoint inspectors.

(3) An inspector appointed by a district council under paragraph (2) shall, on producing if so required some duly authenticated document showing his authority, have a right at all reasonable hours—

- (a) to enter any premises within the district of the council, with or without a constable, for the purpose of ascertaining whether there is or has been on the premises any contravention of the preceding provisions of this Order;
- (b) to require the production of, inspect and take copies of any records (in whatever form they are held) relating to any trade or business carried on on the premises which appear to him to be relevant for the purpose mentioned in sub-paragraph (a);
- (c) where those records are kept by means of a computer, to require the records to be produced in a form in which they may be taken away; and
- (d) to take such measurements and photographs as he considers necessary for the purpose mentioned in sub-paragraph (a).

(4) Any person who intentionally obstructs an inspector appointed under paragraph (2) acting in the execution of his duty shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Offences**

9.—(1) Where the commission by any person of an offence under this Order is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be

charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person,

(2) For the purposes of this Order, 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 and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) In any proceedings for an offence under this Order it shall, subject to paragraph (4), be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(4) If in any case the defence provided by paragraph (3) involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, at least 7 days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

#### *Other provisions relating to Sunday trading*

#### **Construction of certain leases and agreements**

**10.**—(1) Where any lease or agreement (however worded) entered into before the commencement date has the effect of requiring the occupier of a shop to keep the shop open for the serving of retail customers—

- (a) during normal business hours; or
- (b) during hours to be determined otherwise than by or with the consent of the occupier,

that lease or agreement shall not be regarded as requiring, or as enabling any person to require, the occupier to open the shop on Sunday for the serving of retail customers.

(2) Paragraph (1) shall not affect any lease or agreement—

- (a) to the extent that it relates specifically to Sunday and would (apart from this Article) have the effect of requiring Sunday trading of a kind which before the commencement date would have been lawful by virtue of any provision of Part I of the Shops Act (Northern Ireland) 1946; or
- (b) to the extent that it is varied by agreement after the commencement date.

#### **Rights of shop workers as respects Sunday working**

**11.** Schedule 2 (rights of shop workers as respects Sunday working) shall have effect.

#### **Exclusion of Sunday Observance Act (Ireland) 1695**

**12.** The Sunday Observance Act (Ireland) 1695 does not apply to any person—

- (a) by reason of his being the occupier of, or a person employed to work in or about, a shop which is open on Sunday for the serving of retail customers; or
- (b) by reason of his otherwise being, or doing anything, in or about a shop which is open on Sunday for the serving of retail customers.

*Repeal of provisions of the Shops Act (Northern Ireland) 1946*

**Repeal of provisions of the Shops Act (Northern Ireland) 1946**

- 13.** In the Shops Act (Northern Ireland) 1946 the following provisions, namely—
- (a) sections 1 to 5 (closing hours of shops); and
  - (b) Part II (conditions of employment),
- shall cease to have effect.

*Supplementary*

**Amendments and repeals**

**14.**—(1) The statutory provisions mentioned in Schedule 3 are hereby repealed to the extent specified in the third column of that Schedule.

(2) The Department may by order subject to negative resolution—

- (a) repeal any provision of a local Act passed before the commencement date if it appears to the Department that the provision is inconsistent with, or has become unnecessary in consequence of, any provision of this Order; and
- (b) amend any provision of such a local Act if it appears to the Department that the provision requires amendment in consequence of any provision of this Order or any repeal made by virtue of sub-paragraph (a).

(3) Before making an order under paragraph (2) repealing or amending any provision of a local Act, the Department shall consult each district council which it considers would be affected by the repeal or amendment of that provision.

*N.H. Nicholls*  
Clerk of the Privy Council