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STATUTORY RULES OF NORTHERN IRELAND

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**1999 No. 90**

**HEALTH AND SAFETY**

**Health and Safety (Enforcing Authority)  
Regulations (Northern Ireland) 1999**

*Made* - - - - *3rd March 1999*

*Coming into operation* *1st April 1999*

The Department of Economic Development, being the Department concerned<sup>(1)</sup>, in exercise of the powers conferred on it by Articles 17(1) and (3), 20(2) and 55(2) of the Health and Safety at Work (Northern Ireland) Order 1978<sup>(2)</sup> and of every other power enabling it in that behalf, after consultation in accordance with Article 46(1) of that Order with the Health and Safety Agency for Northern Ireland and such other bodies as appeared to the Department to be appropriate, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999 and shall come into operation on 1st April 1999.

**Interpretation**

2.—(1) In these Regulations—

“the 1978 Order” means the Health and Safety at Work (Northern Ireland) Order 1978;

“agricultural activities”—

(a) includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping, forestry, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds and the preparation of land for agricultural use;

(b) does not include such activities at a garden centre or other shop;

“common parts” means those parts of premises used in common by, or for providing services to or common facilities for, the occupiers of the premises;

“construction work” and “contractor” have the respective meanings assigned to them by regulation 2(1) of the Construction (Design and Management) Regulations (Northern Ireland) 1995<sup>(3)</sup>;

“the Department” means the Department of Economic Development;

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(1) See Article 2(2) of S.I. 1978/1039 (N.I. 9)

(2) S.I. 1978/1039 (N.I. 9) as amended by S.I. 1998/2795 (N.I. 18)

(3) S.R. 1995 No. 209

“dock premises” has the meaning assigned to it by regulation 2(1) of the Docks Regulations (Northern Ireland) 1989<sup>(4)</sup>;

“electricity system” does not include the electric lines situated upon the consumer’s side of the supply terminals together with any apparatus permanently connected or intended to be permanently connected thereto;

“the Executive” means the Health and Safety Executive for Northern Ireland;

“fairground” means such part of premises as is for the time being used wholly or mainly for the operation of any fairground equipment, other than a coin-operated ride, non-powered childrens' playground equipment, swimming pool slide, go-kart, or plant designed to be used by members of the public for entertainment purposes for bouncing upon;

“gas” has the same meaning as in Part III of the Gas (Northern Ireland) Order 1996<sup>(5)</sup>;

“gas fittings” has the meaning assigned to it by regulation 2(1) of the Gas Safety (Installation and Use) Regulations (Northern Ireland) 1997<sup>(6)</sup>;

“gas system” does not include a portable or mobile appliance supplied with gas from a cylinder, or the cylinder, pipes and other fittings used for supplying gas to that appliance;

“ionising radiation” has the meaning assigned to it by regulation 2(1) of the Ionising Radiations Regulations (Northern Ireland) 1985<sup>(7)</sup>;

“livestock” means any creature kept for the production of food, wool, skins or fur or for the purpose of any agricultural activity;

“mine” has the meaning assigned to it by section 156(1) of the Mines Act (Northern Ireland) 1969<sup>(8)</sup>;

“office activities” includes any activity for the purposes of administration, clerical work, handling money, telephone and telegraph operating and the production of computer software by the use of computers; and for this purpose “clerical work” includes writing, book keeping, sorting papers, filing, typing, duplicating, machine calculating, drawing and the editorial preparation of matter for publication except where that preparation is on the premises where newspapers, magazines, periodicals or books are printed;

“pleasure craft” has the meaning assigned to it by regulation 2(1) of the Docks Regulations (Northern Ireland) 1989;

“preparation dangerous for supply” has the meaning assigned to it by regulation 2(1) of the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 1995<sup>(9)</sup>;

“quarry” has the meaning assigned to it by Article 2(2) of the Quarries (Northern Ireland) Order 1983<sup>(10)</sup>;

“railway” means any railway or tramway which in either case is used for the carriage of persons or goods;

“substance dangerous for supply” has the meaning assigned to it by regulation 2(1) of the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 1995;

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(4) S.R. 1989 No. 320 to which there are amendments not relevant to these Regulations

(5) S.I. 1996/275 (N.I. 2)

(6) S.R. 1997 No. 194

(7) S.R. 1985 No. 273 to which there are amendments not relevant to these Regulations

(8) 1969 c. 6 (N.I.)

(9) S.R. 1995 No. 60 to which there are amendments not relevant to these Regulations

(10) S.I. 1983/150 (N.I. 4)

“veterinary surgery” has the meaning assigned to it by section 27(1) of the Veterinary Surgeons Act 1966<sup>(11)</sup>;

“work” in relation to a gas fitting has the meaning assigned to it by regulation 2(1) of the Gas Safety (Installation and Use) Regulations (Northern Ireland) 1997;

“zoo” means a zoological establishment within the meaning of section 12(1) of the Welfare of Animals Act (Northern Ireland) 1972<sup>(12)</sup>.

(2) In these Regulations, any reference to the enforcing authority for premises or parts of premises is a reference to the enforcing authority for the relevant statutory provisions in relation to those premises or parts, as the case may be, and to any activity carried on in them.

### **Application**

3. These Regulations shall not apply to an industrial activity involving substances to which the Explosive Acts (Northern Ireland) 1875 to 1970<sup>(13)</sup> or the Explosives (Northern Ireland) Order 1972<sup>(14)</sup> apply.

### **District councils to be enforcing authorities for certain premises and the Executive to be the enforcing authority for certain premises**

4.—(1) Where the main activity carried on in non-domestic premises is specified in Schedule 1, the district council for the district in which those premises are situated shall be the enforcing authority for them, and the Executive shall be the enforcing authority in any other case including the common parts of domestic premises.

(2) Where any premises to which paragraph (1) relates are occupied by more than one occupier, then each part separately occupied shall be regarded as being separate premises for the purposes of that paragraph.

(3) While a vehicle is parked in connection with the sale from it of food, drink or other articles, the vehicle together with its pitch shall be regarded as separate premises for the purposes of paragraph (1).

(4) Where paragraph (2) applies, the district council for the district in which the premises are situated shall be the enforcing authority for the common parts, except that—

- (a) if the Executive is the enforcing authority for—
  - (i) all other parts of the premises, the Executive shall be the enforcing authority for the common parts;
  - (ii) any other part of the premises and the occupier of that part has any obligations under the relevant statutory provisions for any matters appertaining to the common parts, the Executive shall be the enforcing authority for those premises in respect of such matters;
- (b) in the case of land within the perimeter of an airport, the Executive shall be the enforcing authority for the common parts—
  - (i) which are not within a building; or
  - (ii) to which passengers are admitted but other members of the public are not admitted.

(5) This regulation shall have effect subject to regulations 5, 7 and 8.

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<sup>(11)</sup> 1966 c. 36

<sup>(12)</sup> 1972 c. 7 (N.I.); section 12(1) was amended by S.I. 1994/1891 (N.I. 6) Article 14

<sup>(13)</sup> 1875 c. 17, 1924 c. 5 (N.I.); 1970 c. 10 (N.I.)

<sup>(14)</sup> S.I. 1972/730 (N.I. 3)

### The Executive to be the enforcing authority for the whole of certain premises

5.—(1) The Executive shall be the enforcing authority for the whole of the following premises whether occupied by more than one occupier or not—

- (a) a building or construction site, that is to say, premises where the only activities being undertaken are construction work and activities for the purpose of or in connection with such work;
- (b) an offshore installation within the meaning of regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations (Northern Ireland) 1995<sup>(15)</sup>;
- (c) the campus of a university, polytechnic, college, school or similar educational establishment;
- (d) a hospital;
- (e) a railway station, railway goods yard, railway track and any part of premises adjacent thereto, occupied in connection therewith.

(2) The Executive shall be the enforcing authority for—

- (a) the enforcement of any of the relevant statutory provisions against a body specified in paragraph (4) or the officers or servants of such a body; and
- (b) any part of premises occupied by such a body.

(3) Where premises are mainly occupied by a body specified in paragraph (4) and are partly occupied by another person for the purpose of providing services at the premises for that body, the Executive shall be the enforcing authority for the part of the premises occupied by that other person.

(4) The bodies referred to in paragraphs (2) and (3) are—

- (a) a district council;
- (b) the Police Authority for Northern Ireland as defined in section 1(1) of the Police Act (Northern Ireland) 1970<sup>(16)</sup>;
- (c) the Fire Authority for Northern Ireland as referred to in Article 3 of the Fire Services (Northern Ireland) Order 1984<sup>(17)</sup>;
- (d) a headquarters or an organisation designated for the purposes of the International Headquarters and Defence Organisation Act 1964<sup>(18)</sup>; or a service authority of a visiting force within the meaning of section 12(1) of the Visiting Forces Act 1952<sup>(19)</sup>;
- (e) the Crown.

(5) Regulation 4(1) shall not apply to any licensing or enforcement function which by virtue of the Petroleum (Regulation) Acts (Northern Ireland) 1929 and 1937<sup>(20)</sup> is exercised by a harbour authority or a district council.

(6) The Executive shall be the enforcing authority for—

- (a) Article 7 of the 1978 Order;
- (b) the other relevant statutory provisions in respect of any activity specified in Schedule 2 (whether or not it is the main activity carried on in the premises).

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<sup>(15)</sup> S.R. 1995 No. 340

<sup>(16)</sup> 1970 c. 9 (N.I.)

<sup>(17)</sup> S.I. 1984/1821 (N.I. 11)

<sup>(18)</sup> 1964 c. 5

<sup>(19)</sup> 1952 c. 67

<sup>(20)</sup> 1929 c. 13 (N.I.), 1937 c. 4 (N.I.) (1 Edw. 8 and 1 Geo. 6)

(7) Regulation 4 and the preceding provisions of this regulation shall have effect subject to any provisions made for enforcement responsibility by other regulations made under the 1978 Order or by any of the existing statutory provisions.

(8) This regulation shall have effect subject to regulations 7 and 8.

#### **References in judgments, etc.**

6.—(1) In the construction and for the purposes of any judgment, decree, award, deed, contract, certificate or other document passed or made before the date of coming into operation of these Regulations, any reference to, or which is to be construed as a reference to, the Department shall, so far only as may be necessary for the purposes of these Regulations, be construed as a reference to the Executive.

(2) The transfer of functions from the Department to the Executive by these Regulations shall not affect any appointment, direction, instruction, approval, requirement or authorisation made or given or other thing done by the Department before the date of coming into operation of these Regulations, but any such matter shall, if in force immediately before that date, continue in force to the like extent and subject to the like provisions as if it had been duly made, given or done by the Executive.

(3) Anything commenced before the date of coming into operation of these Regulations by or under the authority of the Department may, so far as it relates to any function transferred to the Executive by these Regulations, be carried on or completed by or under the authority of the Executive.

(4) Where, at the date of coming into operation of these Regulations, any legal proceeding is pending to which the Department is a party and the proceeding relates to any of the functions transferred to the Executive by these Regulations, the Executive shall be substituted in the proceeding for the Department, and the proceeding shall not abate by reason of the substitution.

#### **Arrangements enabling responsibility for enforcement to be transferred**

7.—(1) The responsibility for enforcing any of the relevant statutory provisions in respect of any particular premises, part of premises, or any activity carried on there may be transferred from the Executive to a district council or from a district council to the Executive.

(2) A transfer may be made only by agreement between the enforcing authority which has the current responsibility and the authority to which it is proposed to transfer it, or by the Department.

(3) Where a transfer has been made, the authority to which responsibility has been transferred shall cause notice of the transfer to be given to persons affected by it, and where a transfer has been made by the Department, the Department shall cause notice of it to be given to both enforcing authorities concerned.

(4) The preceding paragraphs shall not apply to any part of premises occupied by the Crown or to any activity carried on there but responsibility for enforcing any of the relevant statutory provisions in respect of office activities and the premises used for them may be transferred by an agreement between the Executive, the district council concerned and the government department or other public body concerned.

#### **Arrangements enabling responsibility for enforcement to be assigned in cases of uncertainty**

8.—(1) The responsibility for enforcing any of the relevant statutory provisions in respect of any particular premises, part of premises or any activity carried on there may be assigned to the Executive or to any district council; and an assignment under this paragraph may be made only by the Executive and the district council jointly and only where they agree—

- (a) that there is uncertainty in the particular case as to what are their respective responsibilities by virtue of regulations made under Article 20(2) of the 1978 Order; and

(b) which authority is more appropriate to be responsible for enforcement in that case; and where such an assignment is made the authority to which responsibility has been assigned shall cause notice of the assignment to be given to persons affected by it.

(2) For the purpose of removing uncertainty in any particular case as to what are their respective responsibilities by virtue of regulations made under Article 20(2) of the 1978 Order, either the Executive or a district council may apply to the Department and where the Department considers that there is uncertainty it shall, after considering the circumstances and any views which may have been expressed to it by either enforcing authority or by persons affected, assign responsibility to whichever authority it considers appropriate; and where such an assignment is made the Department shall cause notice of the assignment to be given to both enforcing authorities concerned and to persons affected by it.

### **Revocation**

**9.** The Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1997(21) are hereby revoked.

Sealed with the Official Seal of the Department of Economic Development on

3rd March 1999.

*John J. L. Francey*  
Assistant Secretary

## SCHEDULE 1

Regulation 4(1)

### **Main activities which determine whether district councils will be enforcing authorities**

1. The sale of goods, or the storage of goods for retail or wholesale distribution, except—
  - (a) at container depots where the main activity is the storage of goods in the course of transit to or from dock premises, an airport or a railway;
  - (b) where the main activity is the sale or storage for wholesale distribution of any substance or preparation dangerous for supply;
  - (c) where the main activity is the sale or storage of water or sewage or their by-products or natural or town gas;

and for the purposes of this paragraph, where the main activity carried on in premises is the sale and fitting of motor car tyres, exhausts, windscreens or sunroofs the main activity shall be deemed to be the sale of goods.

2. The display or demonstration of goods at an exhibition, excluding those activities at an agricultural show specified in paragraph 10 of Schedule 2, for the purposes of offer or advertisement for sale.

3. Office activities.

4. Catering services.

5. The provision of permanent or temporary residential accommodation including the provision of a site for caravans or campers.

6. Consumer services provided in a shop except dry cleaning or radio and television repairs, and in this paragraph “consumer services” means services of a type ordinarily supplied to persons who receive them otherwise than in the course of a trade, business or other undertaking carried on by them (whether for profit or not).

7. Cleaning (wet or dry) in coin operated units in launderettes and similar premises.

8. The use of a bath, sauna or solarium, massaging, hair transplanting, skin piercing, manicuring or other cosmetic services and therapeutic treatments, except where they are carried out under the supervision or control of a registered medical practitioner (that is to say, a fully registered person within the meaning of the Medical Act 1983(22)), a dentist registered under the Dentists Act 1984(23), a physiotherapist, an osteopath or a chiropractor.

9. The practice or presentation of the arts, sports, games, entertainment or other cultural or recreational activities except where the main activity is the exhibition of a cave to the public.

10. The hiring out of pleasure craft for use on inland waters.

11. The care, treatment, accommodation or exhibition of animals, birds or other creatures, except where the main activity is horse breeding or horse training at a stable, or is an agricultural activity or veterinary surgery.

12. The activities of an undertaker, except where the main activity is embalming or the making of coffins.

13. Church worship or religious meetings.

14. The provision of car parking facilities within the perimeter of an airport.

15. The provision of child care, or playgroup or nursery facilities.

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(22) 1983 c. 54

(23) 1984 c. 24

## SCHEDULE 2

Regulation 5(6)(b)

**Activities in respect of which the Executive is the enforcing authority**

1. Any activity in a mine or quarry other than a quarry in respect of which notice or abandonment or discontinuance has been given under Article 16 of the Quarries (Northern Ireland) Order 1983.
2. Any activity in a fairground.
3. Any activity in premises occupied by a radio, television or film undertaking in which the activity of broadcasting, recording or filming is carried on, and the activity of broadcasting, recording or filming wherever carried on, and for this purpose “film” includes video.
4. The following activities carried on at any premises by persons who do not normally work in the premises—
  - (a) construction work if—
    - (i) regulation 7(1) of the Construction (Design and Management) Regulations (Northern Ireland) 1995<sup>(24)</sup> (which requires projects which include or are intended to include construction work to be notified to the Executive) applies to the project which includes the work;
    - (ii) the whole or part of the work contracted to be undertaken by the contractor at the premises is to the external fabric or other external part of a building or structure; or
    - (iii) it is carried out in a physically segregated area of the premises, the activities normally carried out in that area have been suspended for the purpose of enabling the construction work to be carried out, the contractor has authority to exclude from that area persons who are not attending in connection with the carrying out of the work and the work is not the maintenance of insulation pipes, boilers or other parts of heating or water systems or its removal from them;
  - (b) the installation, maintenance or repair of any gas system, or any work in relation to a gas fitting;
  - (c) the installation, maintenance or repair of electricity systems;
  - (d) work with ionising radiations except work in one or more of the categories set out in Schedule 3 to the Ionising Radiations Regulations (Northern Ireland) 1985.
5. The use of ionising radiations for medical exposure (within the meaning of regulation 2(1) of the Ionising Radiations Regulations (Northern Ireland) 1985).
6. Any activity in premises occupied by a radiography undertaking in which there is carried on any work with ionising radiations.
7. Any activity involving genetic modification (within the meaning of regulation 2(1) of the Genetically Modified Organisms (Contained Use) Regulations (Northern Ireland) 1994<sup>(25)</sup>).
8. Any activity on board a sea-going ship.
9. Any activity in relation to a ski slope, ski lift, ski tow or cable car.
10. Agricultural activities, and any activity at an agricultural show which involves the handling of livestock or the working of agricultural equipment.
11. Fish farming, maggot and game breeding except in a zoo.
12. Horse breeding or horse training at a stable.

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<sup>(24)</sup> S.R. 1995 No. 209

<sup>(25)</sup> S.R. 1994 No. 143 to which there are amendments not relevant to these Regulations

13. Any activity in relation to a pipeline within the meaning of regulation 3 of the Pipelines Safety Regulations (Northern Ireland) 1997(26).

14. The operation of a railway.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

1. These Regulations revoke and replace the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1997 (“the 1997 Regulations”) with amendments. The 1997 Regulations made provision with respect to enforcement by district councils of the Health and Safety at Work (Northern Ireland) Order 1978 (“the 1978 Order”) and the other relevant statutory provisions within the meaning of the 1978 Order and also specified the premises and activities in respect of which the Department of Economic Development would be the enforcing authority under the aforementioned legislation.

2. In addition to minor and drafting amendments, these Regulations make the following changes of substance.

3. The Health and Safety Executive for Northern Ireland (“the Executive”) assumes enforcement responsibility for those premises and activities in respect of which the Department of Economic Development was formerly the enforcing authority. Consequential provision is made in respect of this (regulation 6).

4. In regulation 2(1)—

- (a) activities at a garden centre or other shop are excluded from the definition of “agricultural activities”;
- (b) in the definition of “fairground”, a go-kart or bouncy castle is excluded from the reference to fairground equipment.

5. The Regulations re-enact the provisions of the 1997 Regulations which provided that where the main activity carried on in any premises was specified in Schedule 1 to those Regulations then, subject to specified exceptions, the district council was the enforcing authority in respect of all activities carried on in those premises (regulation 4(1)). Schedule 1 to these Regulations—

- (a) in specifying the sale of goods or storage of goods for retail or wholesale distribution as a main activity, does not now specify transport undertakings as an exception;
- (b) in specifying the practice or presentation of the arts, sport, games, entertainment or other cultural or recreational activities as a main activity, does not now specify its being carried on in a museum, art gallery or theatre as an exception;
- (c) now specifies the provision of car parking facilities within the perimeter of an airport, and the provision of child care, or play group or nursery facilities as main activities.

6. The Regulations identify common parts of domestic premises as a case in which the Executive is the enforcing authority (regulation 4(1)).

7. The Regulations introduce a new provision for a vehicle parked in connection with the sale from it of food, drink or other articles. The vehicle together with its pitch are to be regarded as separate premises for the purposes of regulation 4(1) (regulation 4(3)).

8. The Regulations re-enact provision (as regulation 4(2) and (4)) that, where premises are occupied by more than one occupier, each part separately occupied, subject to the exceptions specified in regulation 5(1), is to be regarded as separate premises for the purpose of enforcement allocation; and that the district council is the enforcing authority for the common parts subject to exceptions specified in regulation 4(4); but—

- (a) the exceptions specified in regulation 4(4) now include certain common parts in the case of land within the perimeter of an airport;
- (b) the exceptions in regulation 5(1) do not now include land within the perimeter of an airport.

9. Regulation 5 is re-enacted (with the Executive substituted for the Department of Economic Development) save that the provision in the 1997 Regulations which made the Department of Economic Development the enforcing authority for premises where the main activity is indoor sport if specified conditions are met has not been re-enacted.

10. The activities set out in Schedule 2 are allocated for enforcement by the Executive even though the main activity carried on in the premises is listed in Schedule 1 (regulation 5(6)(b)). Schedule 2 now includes any activity in relation to a pipeline, and the operation of a railway.

11. The Regulations make provision for arrangements enabling responsibility for enforcement to be transferred (regulation 7) and arrangements enabling responsibility for enforcement to be assigned in cases of uncertainty (regulation 8).

12. The Regulations revoke the 1997 Regulations (regulation 9).

13. In Great Britain the corresponding Regulations are the Health and Safety (Enforcing Authority) Regulations 1998 (S.I.1998/494). The Health and Safety Executive has prepared a cost benefit assessment in relation to those Regulations and a copy of that assessment, together with a Northern Ireland supplement prepared by the Department of Economic Development, is held at that Department's offices at 83 Ladas Drive, Belfast BT6 9FJ, from where copies may be obtained.