
DRAFT STATUTORY INSTRUMENTS

2006 No.

The Fire and Rescue Services (Northern Ireland) Order 2006

PART III

FIRE SAFETY

CHAPTER II

ENFORCEMENT

Functions of the Board

33.—(1) The Board shall enforce the fire safety duties.

(2) In carrying out the duty imposed by paragraph (1), the Board shall have regard to any guidance given by the Department.

(3) The Chief Fire and Rescue Officer may authorise in writing fire and rescue officers to act for the purpose of carrying out the duty imposed by paragraph (1).

(4) The Board may make arrangements with the Health and Safety Executive for Northern Ireland for such of the functions conferred on the Board by virtue of this Part as may be specified in the arrangements to be carried out (with or without payment) on its behalf by the Executive in relation to a workplace so specified.

(5) The Board may make arrangements with a prescribed person for such of the functions conferred on the Board by virtue of this Part as may be specified in the arrangements to be carried out (with or without payment) on its behalf by the person in relation to a workplace so specified.

Powers of authorised officers

34.—(1) An authorised officer may do anything necessary for the purpose mentioned in Article 33(3).

(2) An authorised officer may in particular under paragraph (1)—

- (a) at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time), enter relevant premises and inspect the whole or part of the relevant premises and anything in them;
- (b) take onto the relevant premises any other persons, and any equipment, that he considers necessary;
- (c) require a person on the relevant premises who is subject to any of the fire safety duties to provide him with any—
 - (i) facilities, information, documents or records; or
 - (ii) other assistance,

which relate to those duties and which he may reasonably request;

- (d) inspect and copy any documents or records on the relevant premises or remove them from the relevant premises;
 - (e) carry out any inspections, measurements and tests in relation to the relevant premises or an article or substance found on the relevant premises, that he considers necessary;
 - (f) take samples of an article or substance found on the relevant premises for the purpose of ascertaining its fire resistance or flammability;
 - (g) if an article found on the relevant premises appears to him to have caused or to be likely to cause danger to the safety of a relevant person in the event of fire, dismantle the article (but not so as to destroy it or damage it unless it is necessary to do so for the purpose of the inspection); and
 - (h) take possession of an article or substance found in the relevant premises and retain it for as long as is necessary for the purpose of—
 - (i) examining it and doing anything he has power to do under sub-paragraph (e) or (g);
 - (ii) ensuring that it is not tampered with before his examination of it is completed; and
 - (iii) ensuring that it is available for use as evidence in proceedings for an offence relevant to the inspection.
- (3) An authorised officer exercising the power in paragraph (2)(a) shall, if so required, produce evidence of his authorisation under Article 33(3)—
- (a) before entering the premises; or
 - (b) at any time before leaving the premises.
- (4) If an authorised officer exercises the power in paragraph (2)(f), he shall—
- (a) leave a notice at the relevant premises with a person who is subject to any of the fire safety duties in relation to the relevant premises (or, if that is impracticable, fix the notice in a prominent position at the relevant premises) giving particulars of the article or substance and stating that he has taken a sample of it; and
 - (b) if it is practicable to do so, give such a person at the relevant premises a portion of the sample marked in a manner sufficient to identify it.
- (5) Before exercising the power in paragraph (2)(g), an authorised officer shall consult such persons as appear to him to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.
- (6) If requested to do so by a person present in the relevant premises who is subject to any of the fire safety duties in relation to the relevant premises, an authorised officer shall cause—
- (a) anything which the officer proposes to do on the relevant premises under the power in sub-paragraph (d) or (e) of paragraph (2); or
 - (b) anything which the officer proposes to do under the power in sub-paragraph (g) of that paragraph,
- to be done in the presence of that person.
- (7) If an authorised officer exercises the power in paragraph (2)(h), he shall leave a notice at the relevant premises with a person who is subject to any of the fire safety duties in relation to the relevant premises (or, if that is impracticable, fix the notice in a prominent position at the relevant premises) giving particulars of the article or substance and stating that he has taken possession of it.

Exercise of powers under Article 34: securing of premises

35. An authorised officer who, by virtue of Article 34, enters relevant premises—

- (a) which are unoccupied; or

(b) from which the occupier is temporarily absent,
shall on departure ensure that all reasonable measures have been taken to leave the relevant premises as effectively secured against unauthorised entry as he found them.

Prohibition notices

36.—(1) Where paragraph (2) applies in relation to relevant premises, the Board may serve a prohibition notice on the occupier of the relevant premises.

(2) This paragraph applies where, having regard in particular to anything affecting relevant persons' escape from relevant premises in the event of fire, the Board considers that use of the relevant premises involves or will involve a risk to relevant persons so serious that use of those premises ought to be prohibited or restricted.

(3) A prohibition notice shall—

- (a) state that the Board considers that paragraph (2) applies;
- (b) specify the matters which the Board considers give rise or, as the case may be, will give rise to the risk;
- (c) direct that the use to which the prohibition notice relates is prohibited or restricted to such extent as may be specified in the notice until the matters specified under sub-paragraph (b) have been remedied; and
- (d) subject to paragraph (4), specify when the notice shall take effect.

(4) The Board may specify that a notice shall take effect on service of the notice only if the Board considers that, in consequence of the matters specified under paragraph (3)(b), there is or, as the case may be, will be an imminent risk of serious personal injury to relevant persons.

(5) A prohibition notice may include directions as to the steps which will have to be taken to remedy the matters specified in the notice.

(6) Before serving a prohibition notice in relation to a house in multiple occupation, the Board shall, where practicable, notify the Northern Ireland Housing Executive of—

- (a) the Board's intention to serve a prohibition notice; and
- (b) the use which it is intended to prohibit or, as the case may be, restrict.

(7) Where the Board has served a prohibition notice on the occupier of relevant premises, the Board may, by notice in writing to the occupier, withdraw the prohibition notice.

Enforcement notices

37.—(1) Where the Board considers that a person has failed to comply with any of the fire safety duties, the Board may serve an enforcement notice on that person.

(2) An enforcement notice shall—

- (a) state that the Board considers that the person on whom the notice is served has failed to comply with the fire safety duty specified in the notice;
- (b) specify why the Board considers that the person has failed to comply with the duty in question; and
- (c) require the person, before the expiry of the period specified in the notice (being a period of at least 28 days), to take the action so specified.

(3) Before serving an enforcement notice including a requirement to make an alteration to relevant premises, the Board shall consult—

- (a) the district council for the area in which the premises are situated;

- (b) if the premises are used as a place of work, the enforcing authority within the meaning of Article 2(2) of the [Health and Safety at Work \(Northern Ireland\) Order 1978 \(NI 9\)](#); and
 - (c) any other person whose consent to the alteration would be required by virtue of any statutory provision.
- (4) Failure to comply with paragraph (3) shall not affect the validity of an enforcement notice.
- (5) Where the Board has served an enforcement notice on a person, the Board may—
- (a) before the expiry of the period specified in the notice, by notice in writing to the person withdraw the enforcement notice; or
 - (b) if an appeal against the notice is not pending under Article 40, extend, or further extend, the period specified in the notice.
- (6) For the purposes of this Article, “fire safety duties” does not include the duty imposed by Article 28.

Alterations notices

38.—(1) Where paragraph (2) or (3) applies in relation to relevant premises, the Board may serve an alterations notice on the appropriate person.

(2) This paragraph applies where there would be a serious risk to relevant persons in respect of harm caused by fire in the relevant premises.

(3) This paragraph applies where—

- (a) paragraph (2) does not apply; but
- (b) if any of the changes specified in paragraph (5) were made, it is likely that paragraph (2) would apply.

(4) An alterations notice is a notice requiring the appropriate person where—

- (a) it is proposed that a change specified in paragraph (5) be made to the relevant premises; and
- (b) if made, the change would constitute a serious risk to relevant persons in respect of harm caused by fire in the relevant premises,

to notify the Board of the change before it is made.

(5) The changes referred to in paragraphs (3) and (4) are—

- (a) a change to the relevant premises;
- (b) a change to the services, fittings or equipment on the relevant premises;
- (c) an increase in the quantities of dangerous substances which are present on the relevant premises; and
- (d) a change in any use to which the relevant premises are put.

(6) The Board may include in an alterations notice provision requiring the appropriate person—

- (a) to keep records of such information as, by virtue of sub-paragraph (d) of paragraph (2) of Article 29, is specified in regulations under paragraph (1) of that Article;
- (b) to keep records of arrangements made, in accordance with regulations under Article 30(1) for the planning, organisation, control, monitoring or review of the fire safety measures; and
- (c) if notifying the Board of a proposed change, to give the Board—
 - (i) a copy of the assessment under Article 25 or, as the case may be, 26; and
 - (ii) a summary of the changes the appropriate person proposes to make to the fire safety measures.

(7) Where the Board has served an alterations notice on an appropriate person, the Board may, by notice in writing to the appropriate person, withdraw the alterations notice.

(8) In this Article, “appropriate person”, in relation to relevant premises, means a person subject to a requirement under Article 25 or 26 in relation to the relevant premises.

Determination of disputes

39.—(1) Where—

- (a) the Board considers that a person has failed to comply with any of the fire safety duties; and
- (b) in relation to the duty in question the person and the Board cannot agree on what (or whether any) action requires to be taken to comply with the duty,

the person and the Board may agree to refer the matter to the Department for determination in accordance with paragraph (2).

(2) On a reference under this Article, the matter shall be determined by the Department or, if the Department thinks fit and the person referred to in paragraph (1) agrees, by a person appointed by the Department.

(3) The Department may by regulations make provision about references and determinations under this Article.

(4) Subject to paragraph (5), where a determination is made by virtue of paragraph (2), the Board may not—

- (a) serve an enforcement notice; or
- (b) include in such a notice directions,

if the notice or, as the case may be, the directions would conflict with the determination.

(5) Paragraph (4) shall not apply if, after the date of the determination, the risk to relevant persons significantly increases because a change is made to—

- (a) the relevant premises; or
- (b) the use to which they are put.

Appeals

40.—(1) A person to whom paragraph (2) applies may, within 21 days from the date on which a relevant notice is served, appeal to the county court in accordance with county court rules.

(2) This paragraph applies to—

- (a) a person on whom a relevant notice is served; and
- (b) if the relevant notice is a prohibition notice, a person who in relation to the relevant premises to which the notice relates is subject to the duties imposed by Article 25 or 26.

(3) On an appeal under this Article, the county court may either cancel or affirm the notice, and, if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit.

(4) Where an appeal is brought under this Article against an enforcement notice or an alterations notice, the operation of the notice shall be suspended until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal.

(5) Where an appeal is brought under this Article against a prohibition notice, the operation of the notice shall not be suspended unless, on the application of the appellant, the court so directs (and then only from the giving of the direction).

(6) In this Article “relevant notice” means—

- (a) a prohibition notice;
- (b) an enforcement notice; or
- (c) an alterations notice.