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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

The Fire and Rescue Services (Northern Ireland) Order 2006

PART III

FIRE SAFETY

CHAPTER III

OFFENCES

**Offences**

**41.—(1) If—**

- (a) a person fails to carry out a duty to which he is subject by virtue of—
  - (i) Article 25;
  - (ii) Article 26; or
  - (iii) Article 27; and
- (b) the failure to carry out the duty in question puts a relevant person at risk of death, or injury, in the event of fire,

the person shall be guilty of an offence.

**(2) If—**

- (a) an employee fails to carry out a duty to which he is subject by virtue of Article 28; and
- (b) the failure to carry out the duty in question puts a relevant person at risk of death, or injury, in the event of fire,

the employee shall be guilty of an offence.

**(3) If—**

- (a) a person fails to comply with a requirement or prohibition to which he is subject by virtue of regulations made under Article 29 or 30; and
- (b) the failure to comply with the requirement or prohibition in question puts a relevant person at risk of death, or injury, in the event of fire,

the person shall be guilty of an offence.

**(4) It shall be an offence for a person—**

- (a) to fail, without reasonable excuse, to comply with a requirement imposed by an authorised officer under Article 34(2)(c);
- (b) falsely to pretend to be an authorised officer;
- (c) to fail to comply with a restriction or prohibition imposed by a prohibition notice;
- (d) to fail to comply with a requirement imposed by an enforcement notice or an alterations notice;
- (e) to contravene Article 45;

- (f) to make in any register, book, notice or other document required by virtue of this Part to be kept, served or given an entry which he knows to be false in a material particular; or
  - (g) to give any information which he knows to be false in a material particular, or recklessly to give any information which is false in a material particular, where the information is given in purported compliance with a requirement to give information imposed by virtue of this Part.
- (5) A person guilty of an offence under paragraph (1), (3) or (4)(c) or (d) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.
- (6) A person guilty of an offence under paragraph (2) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.
- (7) A person guilty of an offence under paragraph (4)(a) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (8) A person guilty of an offence under paragraph (4)(b) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) A person guilty of an offence under paragraph (4)(e), (f) or (g) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) Subject to paragraph (11), it shall be a defence for a person charged with an offence under this Article to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (11) Paragraph (10) shall not apply to—
- (a) an offence under paragraph (1) in respect of a failure to comply with the duty mentioned in sub-paragraph (a)(i) of that paragraph; or
  - (b) an offence under paragraph (3) in respect of a failure to comply so far as is reasonably practicable with a requirement or, as the case may be, a prohibition.
- (12) In any proceedings for an offence under paragraph (1) in respect of a failure to comply with the duty mentioned in sub-paragraph (a)(i) of that paragraph, the onus of showing that it was not reasonably practicable to do more than was done shall be on the accused.
- (13) In any proceedings for an offence under paragraph (3) in respect of a failure to comply with a requirement or prohibition so far as is practicable or so far as is reasonably practicable, the onus of showing that it was not practicable, or (as the case may be) was not reasonably practicable, to do more than was done shall be on the accused.

### **Offences by bodies corporate and partnerships**

**42.**—(1) For the purposes of this Part, section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) 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.

(2) Where a partnership is guilty of an offence under this Part, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.

### **Offence due to fault of other person**

**43.**—(1) Where the commission by any person (“A”) of an offence under this Part is due to the act or default of some other person (“B”), B shall be guilty of the offence.

(2) B may be charged with and convicted of an offence by virtue of paragraph (1) whether or not proceedings are taken against A.

### **Employee’s act or omission not to afford employer defence**

**44.** Nothing in this Part shall be construed as affording an employer a defence in any proceedings in pursuance of Article 41 or 42 by reason only of any act or omission of—

- (a) an employee of his; or
- (b) a person of a prescribed description on whom duties are imposed by virtue of Article 30(1).