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STATUTORY INSTRUMENTS

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**1978 No. 1039**

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

**<sup>F1</sup> PART II**

**HEALTH, SAFETY AND WELFARE IN CONNECTION WITH  
WORK, AND CONTROL OF DANGEROUS SUBSTANCES**

*Miscellaneous and supplementary*

**Representations in connection with licensing provisions in the relevant statutory provisions**

**41** <sup>F1</sup>.—<sup>F2</sup>(1) Any person who is aggrieved by a decision of an authority having power to issue licences (other than nuclear site licences) under any of the relevant statutory provisions—

- (a) refusing to issue him a licence, to renew a licence held by him, or to transfer to him a licence held by another;
- (b) issuing him a licence on or subject to any term, condition or restriction whereby he is aggrieved;
- (c) varying or refusing to vary any term, condition or restriction on or subject to which a licence is held by him; or
- (d) revoking a licence held by him,

may make representations to the Department concerned in accordance with the provisions<sup>F3</sup> prescribed by order under Article 10 of the Deregulation and Contracting Out (Northern Ireland) Order 1996 (model provisions with respect to appeals)].

(2) In this Article—

“licence” means a licence under any of the relevant statutory provisions other than a nuclear site licence;

“nuclear site licence” means a licence to use a site for the purposes of installing or operating a nuclear installation within the meaning of paragraph (3).

(3) For the purposes of paragraph (2) “nuclear installation” means—

- (a) a nuclear reactor (other than such a reactor comprised in a means of transport, whether by land, water or air); or
- (b) any other installation of such class or description as may be prescribed for the purposes of this sub-paragraph or section 1(1)(b) of the Nuclear Installations Act 1965, being an installation designed or adapted for—
  - (i) the production or use of atomic energy; or
  - (ii) the carrying out of any process which is preparatory or ancillary to the production or use of atomic energy and which involves or is capable of causing the emission of ionising radiations; or

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- (iii) the storage, processing or disposal of nuclear fuel or of bulk quantities of other radioactive matter, being matter which has been produced or irradiated in the course of the production or use of nuclear fuel;

and in this paragraph—

“atomic energy” has the meaning assigned by the Atomic Energy Act 1946 ;

“nuclear reactor” means any plant (including any machinery, equipment or appliance, whether affixed to land or not) designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons.

<b>F1</b>	mod. by SR 2000/87; 2000/120
<b>F2</b>	mod. by 2002 c. 8 (NI)
<b>F3</b>	1998 NI 18

### Default powers

**42**<sup>F4</sup>.—<sup>F5</sup>(1) The Department concerned may cause such local or other inquiries to be held as that Department thinks expedient in connection with any matter relating to the enforcement functions of an enforcing authority under this Order.

(2) If the Department concerned is satisfied, after having caused a local inquiry to be held into the matter, that an enforcing authority has failed to perform any of its enforcement functions, that Department may by order empower an officer of that Department to exercise, or procure the exercise of, that function.

(3) Where any expenses are incurred by the Department concerned or by an officer of the Department concerned under any order under paragraph (2)—

- (a) the amount of those expenses as certified by that Department shall, on demand, be paid to that Department by the enforcing authority concerned;
- (b) any sum demanded under sub-paragraph (a)—
  - (i) shall be recoverable by that Department from that authority as a civil debt due to the Crown; or
  - (ii) may be deducted from any sums payable by a Northern Ireland Department to the enforcing authority concerned.

<b>F4</b>	mod. by SR 2000/87; 2000/120
<b>F5</b>	mod. by 2002 c. 8 (NI)

### Civil liability

**43**<sup>F6</sup>.—<sup>F7</sup>(1) Nothing in this Part shall be construed—

- (a) as conferring a right of action in any civil proceedings in respect of any failure to comply with any duty imposed by Articles 4 to 8 or any contravention of Article 9; or
- (b) as affecting the extent (if any) to which breach of a duty imposed by any of the existing statutory provisions is actionable; or
- (c) as affecting the operation of section 12 of the Nuclear Installations Act 1965 (right to compensation by virtue of certain provisions of that Act).

(2) Breach of a duty imposed by health and safety regulations shall, so far as it causes damage, be actionable except in so far as the regulations provide otherwise.

(3) No provision made under Article 17(6)(b) shall afford a defence in any civil proceedings, whether brought under paragraph (2) or not; but as regards any duty imposed as mentioned in paragraph (2) health and safety regulations may provide for any defence specified in the regulations to be available in any action for breach of that duty.

(4) Paragraphs (1)(a) and (2) are without prejudice to any right of action which exists apart from the provisions of this Order, and paragraph (3) is without prejudice to any defence which may be available apart from the provisions of the regulations there mentioned.

(5) Any term of an agreement which purports to exclude or restrict the operation of paragraph (2), or any liability arising by virtue of that paragraph shall be void, except in so far as health and safety regulations provide otherwise.

(6) In this Article “damage” includes the death of, or injury to, any person (including any disease and any impairment of a person's physical or mental condition).

**F6** mod. by SR 2000/87; 2000/120

**F7** mod. by [2002 c. 8 \(NI\)](#)

**Modifications etc. (not altering text)**

**C1** Art. 43(2) applied (with modifications) (27.7.2009) by [Chemicals \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/238\)](#), **reg. 14(1)(c)**

**C2** Art. 43(2) applied (with modifications) (24.8.2009) by [Explosives \(Hazard Information and Packaging for Supply\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/273\)](#), **reg. 14(1)(c)**

**C3** Art. 43(2) applied (with modifications) (1.9.2013) by [The Biocidal Products and Chemicals \(Appointment of Authorities and Enforcement\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/206\)](#), regs. 2(1), **7(1)(c)** (with regs. 3, 8-15, 19, 20, 21)

**Application to Crown**

**44**<sup>F8</sup>—<sup>F9</sup>(1) Subject to the provisions of this Article, the provisions of this Part, except Articles 23 to 27 and 31 to 39, and of regulations made under this Part shall bind the Crown.

(2) Although they do not bind the Crown, Articles 31 to 39 shall apply to persons in the public service of the Crown as they apply to other persons.

(3) For the purposes of this Part and regulations made thereunder persons in the service of the Crown shall be treated as employees of the Crown whether or not they would be so treated apart from this paragraph.

(4) Without prejudice to Article 17(5), the Secretary of State may, to the extent that it appears to him requisite or expedient to do so in the interests of the safety of the State or the safe custody of persons lawfully detained, by order exempt the Crown either generally or in particular respects from all or any of the provisions of this Part which would, by virtue of paragraph (1), bind the Crown.

(5) An order under paragraph (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

**F8** mod. by SR 2000/87; 2000/120

**F9** mod. by [2002 c. 8 \(NI\)](#)

**Modifications etc. (not altering text)**

**C4** [Art. 44\(1\)](#) applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), **reg. 35**

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- C5 Art. 44(2) applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), [reg. 35](#)
- C6 Art. 44(3) applied (2.4.2006) by [The Railways \(Interoperability\) Regulations 2006 \(S.I. 2006/397\)](#), [reg. 35](#)

### Adaptation of enactments to metric units or appropriate metric units

45<sup>F10</sup>.—<sup>F11</sup>(1) Regulations may amend—

- (a) any of the relevant statutory provisions; or
- (b) any provision of a statutory provision which relates to any matter relevant to any of the general purposes of this Part but is not among the relevant statutory provisions;

by substituting an amount or quantity expressed in metric units for an amount or quantity not so expressed or by substituting an amount or quantity expressed in metric units of a description specified in the regulations for an amount or quantity expressed in metric units of a different description.

(2) The amendments shall be such as to preserve the effect of the provisions mentioned except to such extent as in the opinion of the Department concerned is necessary to obtain amounts expressed in convenient and suitable terms.

(3) Regulations may, in the case of a provision which falls within paragraph (1) and contains words which refer to units other than metric units, repeal those words if the Department concerned is of the opinion that those words could be omitted without altering the effect of that provision.

F10 mod. by SR 2000/87; 2000/120

F11 mod. by [2002 c. 8 \(NI\)](#)

### Regulations under the relevant statutory provisions

46<sup>F12</sup>.—<sup>F13</sup>(1) Where any power to make regulations under any of the relevant statutory provisions is exercisable by the Department concerned that power may be exercised either so as to give effect (with or without modifications) to<sup>F14</sup> proposals] submitted by the<sup>F14</sup> Executive] under Article 13<sup>F14</sup> (1A)( c)] or independently of any such<sup>F14</sup> proposals]; but the Department concerned shall not exercise that power independently of such<sup>F14</sup> proposals] unless that Department has consulted the<sup>F14</sup> Executive] and such other bodies as appear to that Department to be appropriate.

(2) Where the Department concerned proposes to exercise any such power as is mentioned in paragraph (1) so as to give effect to any such<sup>F14</sup> proposals] as are there mentioned with modifications, that Department shall, before making the regulations, consult the<sup>F14</sup> Executive].

(3) Where the<sup>F14</sup> Executive] proposes to submit under Article 13<sup>F14</sup> (1A)( c)] any such<sup>F14</sup> proposals] as are mentioned in paragraph (1) except<sup>F14</sup> proposals] for the making of regulations under Article 40(2), it shall, before so submitting them, consult—

- (a) any government department or other body that appears to the<sup>F14</sup> Executive] to be appropriate (and, in particular, in the case of proposals for the making of regulations under Article 20(2), any body representing district councils that so appears, and, in the case of proposals for the making of regulations relating to electro-magnetic radiations, the Department of Health and Social Services<sup>F15</sup> ...);
- (b) such government departments and other bodies, if any, as, in relation to any matter dealt with in the proposals, the<sup>F14</sup> Executive] is required to consult, under this paragraph by virtue of directions given to it by the Department.

- F12 mod. by SR 2000/87; 2000/120
- F13 mod. by 2002 c. 8 (NI)
- F14 1998 NI 18
- F15 Words in art. 46(3)(a) omitted (1.4.2013) by virtue of The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013 (S.I. 2013/235), art. 1(2), Sch. 2 para. 7(3)

### Exclusion of application to domestic employment

47<sup>F16</sup>.<sup>F17</sup> Nothing in this Part shall apply in relation to a person by reason only that he employs another, or is himself employed, as a domestic servant in a private household.

- F16 mod. by SR 2000/87; 2000/120
- F17 mod. by 2002 c. 8 (NI)

### Application of Part to police

47A<sup>F18</sup>.<sup>F19</sup> (1) For the purposes of this Part, a person who, otherwise than under a contract of employment, holds the office of constable shall be treated as an employee of the relevant officer.

(2) In this Article “the relevant officer”

[<sup>F20</sup>(a) in relation to a police officer, means the Chief Constable;]

(b) <sup>F21</sup> .....

(c) in relation to any other person holding the office of constable, means the person who has the direction and control of the body of constables in question.

[<sup>F22</sup>(2A) For the purposes of this Part, the relevant officer, as defined by paragraph (2)(a) or (c), shall be treated as a corporation sole.

(2B) Where, in a case in which the relevant officer, as so defined, is guilty of an offence by virtue of this Article, it is proved—

- (a) that the officer-holder personally consented to the commission of the offence,
- (b) that he personally connived in its commission, or
- (c) that the commission of the offence was attributable to personal neglect on his part,

the office-holder (as well as the corporation sole) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2C) In paragraph (2B) “the office-holder”, in relation to the relevant officer, means an individual who, at the time of the consent, connivance or neglect—

- (a) held the office or other position mentioned in paragraph (2) as the office or position of that officer; or
- (b) was for the time being responsible for exercising and performing the powers and duties of that office or position.

(2D) The provisions mentioned in paragraph (2E) (which impose the same liability for unlawful conduct of constables on persons having their direction or control as would arise if the constables were employees of those persons) do not apply to any liability by virtue of this Part.

(2E) Those provisions are—

- (a) paragraph 7(1) of Schedule 8 to the Police Act 1997;
- (b) section 27(8) of the Police (Northern Ireland) Act 1998;

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(c) section 29(1) of that Act;

(d) section 28 of the Serious Organised Crime and Police Act 2005.]

(3) For the purposes of regulations under Article 4(4) the Police Association for Northern Ireland shall be treated as a recognised trade union recognised by the Chief Constable<sup>F23</sup> . . . .

(4) Regulations under Article 4(4) may provide, in relation to persons falling within paragraph (2) (b) or (c), that a body specified in the regulations is to be treated as a recognised trade union recognised by such person as may be specified.

**F18** mod. by SR 2000/87; 2000/120

**F19** mod. by 2002 c. 8 (NI)

**F20** 2000 c. 32

**F21** Art. 47A(2)(b) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 174(2), 178(8), Sch. 4 para. 39, Sch. 17 Pt. 2; S.I. 2006/378, art. 4(1), Sch. paras. 10, 12, 13(o) (subject to art. 4(1)-(7))

**F22** Art. 47A(2A)-(2E) inserted (25.7.2006) by Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33), ss. 27(1), 31(1)(f) (with s. 27(4)-(6))

**F23** 2000 c. 32

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