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STATUTORY INSTRUMENTS

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**1981 No. 158**

**Clean Air (Northern Ireland) Order 1981**

Height of chimneys

**Height of chimneys**

14.—(1) Where it is proposed to erect a chimney (other than a chimney of a building used or to be used wholly for one or more than one of the following purposes, that is to say as a residence or residences, a shop or shops or an office or offices) or a chimney to which Article 15 applies for carrying smoke or grit and dust or gases, plans for that chimney (showing also where it is to be erected) shall be submitted to the district council for its approval for the purposes of this Article.

(2) The provisions of Schedule 1 shall, subject to the provisions of this Article, apply in relation to an application for approval by the district council of plans submitted to that council pursuant to this Article.

(3) The district council shall not approve plans submitted to that council pursuant to this Article unless it is satisfied that the height of the chimney as shown on the plans will be sufficient to prevent, so far as practicable, the smoke or grit and dust or gases from becoming a nuisance or prejudicial to health having regard to—

- (a) the purpose of the chimney;
- (b) the position and description of buildings near to it;
- (c) the levels of the neighbouring ground; and
- (d) any other matters requiring consideration in the circumstances.

(4) Where a chimney to which paragraph (1) applies is erected otherwise than in accordance with plans approved by the district council for the purposes of this Article the district council may—

- (a) cause so much of that erection as has been so carried out to be altered, pulled down or removed;
- (b) recover summarily, from the person who caused that erection to be carried out, any expenses incurred by the district council in the carrying out of work of the kind referred to in sub-paragraph (a).

**Height of chimneys serving a furnace**

15.—(1) An occupier of a building shall not knowingly cause or permit a furnace to which this Article applies to be used in the building<sup>F1</sup> as mentioned in Article 9(1) unless the height of the chimney serving the furnace has been approved under this Article and any conditions subject to which the approval was granted are complied with, and if on any day he does so, he shall be guilty of an offence.

(2) A person having possession of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land, other than an exempted boiler or plant, shall not knowingly cause or permit a furnace of the boiler or plant to which this Article applies to be used<sup>F1</sup> as mentioned in Article 9(1), unless the height of the chimney serving the furnace has been approved under this

Article and any conditions subject to which the approval was granted are complied with, and if on any day he does so, he shall be guilty of an offence.

*Para. (3) rep. by 1985 NI 15*

(4) A district council shall not approve the height of a chimney under this Article unless it is satisfied that its height will be sufficient to prevent, so far as practicable, the smoke, grit, dust, gases or fumes emitted from the chimney from becoming prejudicial to health or a nuisance having regard to—

- (a) the purpose of the chimney;
- (b) the position and descriptions of buildings near it;
- (c) the levels of the neighbouring ground;
- (d) any other matters requiring consideration in the circumstances.

(5) An approval of the height of a chimney by a district council under this Article may be granted without qualification or subject to conditions as to the rate or quality, or the rate and quality, of emissions from the chimney.

(6) If a district council to whom an application is duly made for approval under this Article fails to determine the application and to give a written notification of its decision to the applicant within two months of receiving the application or such longer period as may be agreed in writing between the applicant and the council, the approval applied for shall be deemed to have been refused.

(7) If a district council decides not to approve the height of a chimney under this Article or to attach conditions to its approval, it shall give the applicant a written notification of its decision, stating its reasons and, in the case of a decision not to approve the height of the chimney, specifying the lowest height (if any) which it is prepared to approve unconditionally or the lowest height which it is prepared to approve if approval is granted subject to any specified conditions, or (if it thinks fit) both, and the applicant may within twenty-eight days of receiving the notification appeal against the decision to the Department.

(8) On an appeal under this Article the Department may confirm the decision appealed against, or may approve the height of the chimney without qualification or subject to conditions as to the rate or quality, or the rate and quality, of emissions from the chimney, or may cancel any conditions imposed by the district council or substitute for any conditions so imposed any other conditions which the council had power to impose.

(9) The Department shall give the appellant a written notification of any decision on an appeal under this Article stating the reasons for the decision, and, in the case of a decision not to approve the height of a chimney, specifying the lowest height (if any) which the Department is prepared to approve unconditionally or the lowest height which the Department is prepared to approve if approval is granted subject to any specified conditions, or (if it thinks fit) both.

(10) This Article applies to—

- (a) any furnace served by a chimney other than a chimney the construction of which was begun or the plans for which were passed before the date of the coming into operation of Article 62 of the Pollution Control and Local Government (Northern Ireland) Order 1978 ;
- (b) any furnace the combustion space of which has been increased since the date of the coming into operation of that Article 62; and
- (c) any furnace the installation of which was begun after the date of the coming into operation of that Article 62 and which replaces a furnace which had a smaller combustion space.

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(11) In this Article “exempted boiler or plant” means a boiler or plant which is used or to be used wholly for any prescribed purpose, and references to the applicant shall, in a case where the

original applicant notifies the district council that his interest in the application has been transferred to another person, be construed as references to that other person.

**F1** prosp. rep. by [1997 NI 18](#)  
**F2** [1992 NI 1](#)

### **Application to fumes of certain provisions as to grit and dust**

**16.** The Department may by regulations—

- (a) apply all or any of the provisions of Articles<sup>F3</sup> 7, 9, 10, 26(3), 27(4) and 29(1) (provisions relating to grit and dust) to fumes as they apply to grit and dust; and
- (b) apply all or any of the provisions of Article 5 (requirement that new furnaces shall be so far as practicable smokeless) to fumes as they apply to smoke;

subject, in either case, to such exceptions and modifications as the Department thinks expedient.

**F3** prosp. rep. by [1997 NI 18](#)

**Status:**

Point in time view as at 01/01/2006.

**Changes to legislation:**

There are currently no known outstanding effects for the Clean Air (Northern Ireland) Order 1981, Height of chimneys.