

SCHEDULE 5

Regulation 42

Enforcement powers of the Health and Safety Executive for Northern Ireland under the 1978 Order

Enforcement powers under the 1978 Order

1. For the purposes of enforcing these Regulations and RAMS (in its application to electrical equipment), the following Articles of the 1978 Order apply subject to the modifications in paragraph 2—

- (a) Article 21 (appointment of inspectors);
- (b) Article 22 (powers of inspectors);
- (c) Article 23 (improvement notices);
- (d) Article 24 (prohibition notices);
- (e) Article 25 (provisions supplementary to Articles 23 and 24);
- (f) Article 26 (appeal against improvement or prohibition notice);
- (g) Article 27 (power to deal with cause of imminent danger);
- (h) Article 27A (power of customs officer to detain articles and substances);
- (i) Article 28 (power of enforcing authorities to indemnify inspectors);
- (j) Article 29 (obtaining of information by the Executive, enforcing authorities etc);
- (k) Article 29A (information communicated by Commissioners for Revenue and Customs);
- (l) Article 30 (restrictions on disclosure of information);
- (m) Article 31 (offences);
- (n) Article 32 (extension of time for bringing summary proceedings);
- (o) Article 33 (venue);
- (p) Article 36 (prosecution by inspectors);
- (q) Article 38 (evidence);
- (r) Article 39 (power of court to order cause of offence to be remedied or, in certain cases, forfeiture).

Modifications to the 1978 Order

2. The Articles of the 1978 Order referred to in paragraph 1 apply as if—
- (a) references to “relevant statutory provisions” were references to—
 - (i) the provisions of the 1978 Order set out in paragraph 1, as modified by this paragraph; and
 - (ii) these Regulations;
 - (b) references to “risk” were references to “risk” within the meaning of regulation 2(4) of these Regulations;
 - (c) in Article 21—
 - (i) in paragraph (1), for “Every enforcing authority” there were substituted “The Health and Safety Executive for Northern Ireland ”;
 - (ii) in paragraph (1), “within its field of responsibility” were omitted;
 - (iii) in paragraph (2), sub-paragraph (b) were omitted;

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- (iv) in paragraph (3), for “enforcing authority which appointed him” there were substituted “ Health and Safety Executive for Northern Ireland ”;
- (d) in Article 22—
 - (i) in paragraph (1), “within the field of responsibility of the enforcing authority which appointed him” were omitted;
 - (ii) in paragraph 2(c)(i), for “his (the inspector's) enforcing authority” there were substituted “ the Health and Safety Executive for Northern Ireland ”;
 - (iii) in paragraph 2(2)(h), for “him to have caused or to be likely to cause danger to health and safety”, there were substituted “ contravene the relevant statutory provisions or present a risk ”;
 - (iv) paragraph (3) were omitted.
- (e) in Article 23—
 - (i) before paragraph (a), there were inserted—
 - “(za) is making available on the market electrical equipment which presents a risk;”;
 - (ii) after “specifying the”, there were inserted “ risk, or ”; and
 - (iii) after “requiring that person to”, there were inserted “ address the risk or ”;
- (f) for Article 24(2) and (3) there were substituted—
 - “(2) An inspector may serve a notice (in this Part referred to as a “prohibition notice”) on a person if, as regards any activities to which this paragraph applies, the inspector is of the opinion that, as carried on or likely to be carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve—
 - (a) a risk; or
 - (b) the contravention of a relevant statutory provision.
 - (3) A prohibition notice must—
 - (a) state that the inspector is of the said opinion;
 - (b) specify the matters which in his opinion give or, as the case may be, will give rise to the said risk;
 - (c) where in his opinion any of those matters involves or, as the case may be, will involve a contravention of any of the relevant statutory provisions, state that he is of the opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
 - (d) direct that the activities to which the notice relates must not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of sub-paragraph (b) and any associated contraventions of provisions so specified in pursuance of sub-paragraph (c) have been remedied.”;
- (g) in Article 25, paragraphs (3), (4) and (5) were omitted;
- (h) in Articles 27A(1), for “any enforcing authority” and “the authority” there were substituted “ the Health and Safety Executive for Northern Ireland ”;
- (i) for the heading to Article 28, there were substituted “ Power to indemnify inspectors ”;
- (j) in Article 28, for “the enforcing authority which appointed him”, “that authority” and “the authority”, there were, in each case, substituted “ the Health and Safety Executive for Northern Ireland ”;

- (k) in Article 29—
 - (i) in paragraph (1)(b), for “an enforcing authority” there were substituted “ the Health and Safety Executive for Northern Ireland ” and for “the Authority's functions” there were substituted “ its functions ”;
 - (ii) “the department concerned, or” were omitted;
 - (iii) for “the Executive”, in each case it appears, there were substituted “ the Health and Safety Executive for Northern Ireland ”;
 - (iv) “or, as the case may be, to the enforcing authority in question” were omitted.
- (l) in Article 29A(2) for “an enforcing authority” there were substituted “ the Health and Safety Executive for Northern Ireland ”;
- (m) in Article 30—
 - (i) for “Executive”, on each occasion that it appears, there were substituted “ Health and Safety Executive for Northern Ireland ”;
 - (ii) in paragraph (3), “or any enforcing authority” were omitted;
 - (iii) in paragraph (4), “or an enforcing authority” were omitted;
 - (iv) in paragraph (4), “or authority (including in the case of an enforcing authority, any inspector appointed by it)” were omitted;
 - (v) in paragraph (5), “or the purposes of the enforcing authority in question” were omitted;
 - (vi) in paragraph (6), “16(4)(a) or” were omitted;
 - (vii) for paragraph (6)(b), there were substituted—
 - “(b) for the purposes of any legal proceedings or for the purposes of a report of any such proceedings;”;and
- (n) in Article 31—
 - (i) in paragraph (1), sub-paragraphs (a) to (i) and (k) to (m) were omitted;
 - (ii) for paragraph (2), there were substituted—
 - “(2) A person guilty of an offence under Article 31 is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding 3 months, or to both;”;and
 - (iii) Article 31(3) were omitted;
- (o) in Article 32—
 - (i) in paragraph (1), sub-paragraphs (a) and (b) were omitted;
 - (ii) in paragraph (1), for the words from “and it appears” to the end, there were substituted “ and it appears from the proceedings at the inquest that any of the relevant statutory provisions was contravened at a time which is material in relation to the subject-matter of the inquest, summary proceedings against any person liable to be proceeded against in respect of the contravention may be commenced at any time within three months of the conclusion of the inquest. ”; and
 - (iii) paragraphs (3) and (4) were omitted;
- (p) in Article 33, for “any enforcing authority” there were substituted “ Health and Safety Executive for Northern Ireland ”;
- (q) in Article 36, for “enforcing authority” there were substituted “ Health and Safety Executive for Northern Ireland ”; and
- (r) in Article 39, paragraphs (3A), (4) and (5) were omitted.

Status:

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Changes to legislation:

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