

1978 No. 1039 (N.I. 9)

NORTHERN IRELAND

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

Laid before Parliament in draft

Made - - - - - 25th July 1978

Coming into operation in accordance with Article 1(2)



STATUTORY INSTRUMENTS

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ARRANGEMENT OF ORDER

PART I

INTRODUCTORY

Article

1. Title and commencement.
2. Interpretation.

PART II

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

Preliminary

3. Preliminary.

General duties

4. General duties of employers to their employees.
5. General duties of employers and self-employed to persons other than their employees.
6. General duties of persons concerned with premises to persons other than their employees.
7. General duties of manufacturers etc. as regards articles and substances for use at work.
8. General duties of employees at work.
9. Duty not to interfere with or misuse things provided pursuant to certain provisions.
10. Duty not to charge employees for things done or provided pursuant to certain specific requirements.
11. General duty of the Department concerned.

The Health and Safety Agency for Northern Ireland

12. Establishment of the Agency.
13. Functions of the Agency.
14. Control of the Agency by the Department.
15. Additional functions of the Agency.

Investigations and inquiries

16. Investigations and inquiries.

Health and safety regulations and approved codes of practice

17. Health and safety regulations.
18. Approval of codes of practice by the Agency.
19. Use of approved codes of practice in criminal proceedings.

Enforcement

20. Authorities responsible for enforcement of the relevant statutory provisions.
21. Appointment of inspectors.
22. Powers of inspectors.
23. Improvement notices.
24. Prohibition notices.
25. Provisions supplementary to Articles 23 and 24.
26. Appeal against improvement or prohibition notice.
27. Power to deal with cause of imminent danger.
28. Power of enforcing authorities to indemnify their inspectors.

Obtaining and disclosure of information

29. Obtaining of information.
30. Restrictions on disclosure of information.

Provisions as to offences

31. Offences.
32. Extension of time for bringing summary proceedings.
33. Venue.
34. Offences due to fault of other person.
35. Restriction on institution of proceedings.
36. Prosecutions by inspectors.
37. Onus of proving limits of what is practicable etc.
38. Evidence.
39. Power of court to order cause of offence to be remedied and, in certain cases, forfeiture.

Financial provisions

40. Financial provisions.

Miscellaneous and supplementary

41. Representations in connection with licensing provisions in the relevant statutory provisions.

42. Default powers.
43. Civil liability.
44. Application to Crown.
45. Adaptation of enactments to metric units or appropriate metric units.
46. Regulations under the relevant statutory provisions.
47. Exclusion of application to domestic employment.

PART III

THE EMPLOYMENT MEDICAL ADVISORY SERVICE

48. The employment medical advisory service.
49. Fees.
50. Supplementary.
51. Amendment of the Factories Act (Northern Ireland) 1965.

PART IV

MISCELLANEOUS AND GENERAL

52. Amendment of the Radiological Protection Act 1970.
53. Application to explosives.
54. General power to repeal or modify statutory provisions.
55. Regulations.
56. Transitional provisions, amendments and repeals.

SCHEDULES:

- Schedule 1—Existing statutory provisions.
- Schedule 2—The Health and Safety Agency for Northern Ireland.
- Schedule 3—Subject-matter of health and safety regulations.
- Schedule 4—Representations in connection with licensing provisions.
- Schedule 5—The Factories Act (Northern Ireland) 1965 (c. 20).
- Schedule 6—Amendments.
- Schedule 7—Repeals.

At the Court at Buckingham Palace, the 25th day of July 1978

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (a), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Health and Safety at Work (Northern Ireland) Order 1978.

(a) 1974 c. 28.

(2) This Order shall come into operation on such day or days as the Secretary of State may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (a) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Agency” means the Health and Safety Agency for Northern Ireland established under Article 12;

“article for use at work” means—

(a) any plant designed for use or operation (whether exclusively or not) by persons at work, and

(b) any article designed for use as a component in any such plant;

“code of practice” (without prejudice to Article 18(8)) includes a standard, a specification and any other documentary form of practical guidance;

“conditional sale agreement” means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

“contract of employment” means a contract of employment or apprenticeship (whether express or implied and, if express, whether oral or in writing);

“credit-sale agreement” means an agreement for the sale of goods, under which the purchase price or part of it is payable by instalments, but which is not a conditional sale agreement;

“the Department” means the Department of Manpower Services;

“the Department concerned” in relation to any purpose or function under this Order in relation to matters of any class, means the government department which is concerned, or the government departments acting jointly which are concerned, with matters of that class under any of the existing statutory provisions, and where no department is so concerned, means the Department;

“domestic premises” means premises occupied as a private dwelling (including any garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling), and “non-domestic premises” shall be construed accordingly;

“employee” means an individual who works under a contract of employment;

“enforcing authority” means the Department concerned or any other authority which is by any of the relevant statutory provisions or by regulations under Article 20 (2) made responsible for the enforcement of any of those provisions to any extent;

“the general purposes of this Part” has the meaning assigned by Article 3;

“government department”, except in the definition of Department concerned, includes a department of the Government of the United Kingdom;

“health and safety regulations” has the meaning assigned by Article 17 (1);

“hire-purchase agreement” means an agreement other than a conditional sale agreement, under which—

- (a) goods are bailed in return for periodical payments by the person to whom they are bailed; and
- (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs:—
 - (i) the exercise of an option to purchase by that person;
 - (ii) the doing of any other specified act by any party to the agreement;
 - (iii) the happening of any other event;
 and “hire-purchase” shall be construed accordingly;
 - “improvement notice” means a notice under Article 23;
 - “inspector” means an inspector appointed under Article 21;
 - “modifications” includes additions, omissions, amendments, adaptations, applications, extensions, restrictions and substitutions;
 - “offshore installation” means any installation which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation;
 - “personal injury” includes any disease and any impairment of a person’s physical or mental condition;
 - “plant” includes any machinery, equipment or appliance;
 - “premises” includes any place and, in particular, includes—
 - (a) any vehicle, vessel, aircraft or hovercraft,
 - (b) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof), and
 - (c) any tent or movable structure;
 - “prescribed” means prescribed by regulations;
 - “prohibition notice” means a notice under Article 24;
 - “regulations” means regulations made by the Department concerned;
 - “self-employed person” means an individual who works for gain or reward otherwise than under a contract of employment, whether or not he himself employs others;
 - “statutory provision” has the meaning assigned to it by section 1 (f) of the Interpretation Act (Northern Ireland) 1954; and
 - (a) “existing statutory provisions” means the provisions mentioned in Schedule 1;
 - (b) “relevant statutory provisions” means
 - (i) the provisions of Part II and of any health and safety regulations; and
 - (ii) the existing statutory provisions;
 - “substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;
 - “substance for use at work” means any substance intended for use (whether exclusively or not) by persons at work;
 - “supply” where the reference is to supplying articles or substances, means supplying them by way of sale, lease, hire or hire-purchase, whether as principal or agent for another.

(3) In this Order any reference to an enforcing authority’s field of responsibility is a reference to the field over which that authority’s responsibility for

the enforcement of any of the relevant statutory provisions extends for the time being.

- (4) Subject to paragraph (5) for the purposes of this Order—
 - (a) “work” means work as an employee or as a self-employed person;
 - (b) an employee is at work throughout the time when he is in the course of his employment, but not otherwise; and
 - (c) a self-employed person is at work throughout such time as he devotes to work as a self-employed person.
- (5) Regulations may—
 - (a) extend the meaning of “work” and “at work”; and
 - (b) in that connection provide for any of the relevant statutory provisions to have effect subject to such adaptations as may be specified in the regulations.

PART II

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

Preliminary

Preliminary

- 3.—(1) The provisions of this Part shall have effect with a view to—
- (a) securing the health, safety and welfare of persons at work;
 - (b) protecting persons other than persons at work against risks to health or safety arising out of or in connection with the activities of persons at work;
 - (c) controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances, and generally preventing the unlawful acquisition, possession and use of such substances.

(2) The provisions of this Part relating to the making of health and safety regulations and the preparation and approval of codes of practice shall in particular have effect with a view to enabling the existing statutory provisions to be progressively replaced by a system of regulations and approved codes of practice operating in combination with the other provisions of this Part and designed to maintain or improve the standards of health, safety and welfare established by or under the existing statutory provisions.

(3) For the purposes of this Part risks arising out of or in connection with the activities of persons at work shall be treated as including risks attributable to the manner of conducting an undertaking, the plant or substances used for the purposes of an undertaking and the condition of premises so used or any part of them.

(4) References in this Part to the general purposes of this Part are references to the purposes mentioned in paragraph (1).

(5) Except as provided by Article 53, nothing in this Order shall enable any regulations to be made dealing with any matter which is dealt with by the Explosives Acts (Northern Ireland) 1875 to 1970 (a) or the Explosives (Northern Ireland) Order 1972 (b) or which may be dealt with by any instrument under those Acts or that Order.

General duties

General duties of employers to their employees

4.—(1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

(a) 1875 c. 17; 1924 c. 5 (N.I.); 1970 c. 10 (N.I.).

(b) S.I. 1972/730 (N.I. 3).

(2) Without prejudice to the generality of an employer's duty under paragraph (1), the matters to which that duty extends include in particular—

- (a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;
- (b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;
- (d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;
- (e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

(3) Except in such cases as may be prescribed, it shall be the duty of every employer to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all of his employees.

(4) Regulations may provide for the appointment in prescribed cases by recognised trade unions (within the meaning of the regulations) of safety representatives from amongst the employees, and those representatives shall represent the employees in consultations with the employers under paragraph (5) and shall have such other functions as may be prescribed.

(5) It shall be the duty of every employer to consult any such representatives with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures.

(6) In such cases as may be prescribed it shall be the duty of every employer, if requested to do so by the safety representatives mentioned in paragraph (4), to establish, in accordance with regulations, a safety committee having the function of keeping under review the measures taken to ensure the health and safety at work of his employees and such other functions as may be prescribed.

General duties of employers and self-employed to persons other than their employees

5.—(1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

(2) It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.

(3) In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being his employees) who may be

affected by the way in which he conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety.

General duties of persons concerned with premises to persons other than their employees

6.—(1) This Article has effect for imposing on persons duties in relation to those who—

- (a) are not their employees; but
- (b) use non-domestic premises made available to them as a place of work or as a place where they may use plant or substances provided for their use there,

and applies to premises so made available and other non-domestic premises used in connection with them.

(2) It shall be the duty of each person who has, to any extent, control of premises to which this Article applies or of the means of access thereto or egress therefrom or of any plant or substance in such premises to take such measures as it is reasonable for a person in his position to take to ensure, so far as is reasonably practicable, that the premises, all means of access thereto or egress therefrom available for use by persons using the premises, and any plant or substance in the premises or, as the case may be, provided for use there, is or are safe and without risks to health.

(3) Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to—

- (a) the maintenance or repair of any premises to which this Article applies or any means of access thereto or egress therefrom; or
- (b) the safety of or the absence of risks to health arising from plant or substances in any such premises;

that person shall be treated, for the purposes of paragraph (2), as being a person who has control of the matters to which his obligation extends.

(4) Any reference in this Article to a person having control of any premises or matter is a reference to a person having control of the premises or matter in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not).

General duties of manufacturers etc. as regards articles and substances for use at work

7.—(1) It shall be the duty of any person who designs, manufactures, imports or supplies any article for use at work—

- (a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to health when properly used;
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by sub-paragraph (a);
- (c) to take such steps as are necessary to secure that there will be available in connection with the use of the article at work adequate information about the use for which it is designed and has been tested, and about any conditions necessary to ensure that, when put to that use, it will be safe and without risks to health.

(2) It shall be the duty of any person who undertakes the design or manu-

facture of any article for use at work to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to health or safety to which the design or article may give rise.

(3) It shall be the duty of any person who erects or installs any article for use at work in any premises where that article is to be used by persons at work to ensure, so far as is reasonably practicable, that nothing about the way in which it is erected or installed makes it unsafe or a risk to health when properly used.

(4) It shall be the duty of any person who manufactures, imports or supplies any substance for use at work—

- (a) to ensure, so far as is reasonably practicable, that the substance is safe and without risks to health when properly used;
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by sub-paragraph (a);
- (c) to take such steps as are necessary to secure that there will be available in connection with the use of the substance at work adequate information about the results of any relevant tests which have been carried out on or in connection with the substance and about any conditions necessary to ensure that it will be safe and without risks to health when properly used.

(5) It shall be the duty of any person who undertakes the manufacture of any substance for use at work to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to health or safety to which the substance may give rise.

(6) Nothing in the provisions of this Article shall be taken to require a person to repeat any testing, examination or research which has been carried out otherwise than by him or at his instance, in so far as it is reasonable for him to rely on the results thereof for the purposes of those provisions.

(7) Any duty imposed on any person by any of the preceding provisions of this Article shall extend only to things done in the course of a trade, business or other undertaking carried on by him (whether for profit or not) and to matters within his control.

(8) Where a person designs, manufactures, imports or supplies an article for or to another on the basis of a written undertaking by that other to take specified steps sufficient to ensure, so far as is reasonably practicable, that the article will be safe and without risks to health when properly used, the undertaking shall have the effect of relieving the first-mentioned person from the duty imposed by paragraph (1) (a) to such extent as is reasonable having regard to the terms of the undertaking.

(9) Where a person (“the ostensible supplier”) supplies any article for use at work or substance for use at work to another (“the customer”) under a hire-purchase agreement, conditional sale agreement or credit-sale agreement, and the ostensible supplier—

- (a) carries on the business of financing the acquisition of goods by others by means of such agreements; and
- (b) in the course of that business acquired his interest in the article or substance supplied to the customer as a means of financing its acquisition by the customer from a third person (“the effective supplier”),

the effective supplier and not the ostensible supplier shall be treated for the purposes of this Article as supplying the article or substance to the customer, and any duty imposed by this Article on suppliers shall accordingly fall on the effective supplier and not on the ostensible supplier.

(10) For the purposes of this Article an article or substance is not to be regarded as properly used where it is used without regard to any relevant information or advice relating to its use which has been made available by a person by whom it was designed, manufactured, imported or supplied.

General duties of employees at work

8. It shall be the duty of every employee while at work—

- (a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and
- (b) as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

Duty not to interfere with or misuse things provided pursuant to certain provisions

9. No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of any of the relevant statutory provisions.

Duty not to charge employees for things done or provided pursuant to certain specific requirements

10. No employer shall levy or permit to be levied on any employee of his any charge in respect of anything done or provided in pursuance of any specific requirement of the relevant statutory provisions.

General duty of the Department concerned

11. In addition to the other functions conferred on the Department concerned under this Order, it shall be the general duty of that Department to do such things and make such arrangements as it considers appropriate for the general purposes of this Part.

The Health and Safety Agency for Northern Ireland

Establishment of the Agency

12.—(1) There shall be established a body to be called the Health and Safety Agency for Northern Ireland consisting of a chairman appointed by the Head of the Department and not less than six nor more than nine other members appointed by the Head of the Department in accordance with paragraph (2).

(2) Before appointing the members of the Agency (other than the chairman) the Head of the Department shall—

- (a) as to three of them, consult such organisations representing employers as he considers appropriate;
- (b) as to three others, consult such organisations representing employees as he considers appropriate; and
- (c) as to any other members he may appoint, consult such organisations representing district councils and such other organisations, other than the organisations mentioned in sub-paragraph (a) or (b), as he considers appropriate.

(3) The Agency shall have such functions as are conferred on it under the succeeding provisions of this Order.

(4) The provisions of Schedule 2 shall have effect with respect to the Agency.

Functions of the Agency

13.—(1) It shall be the duty of the Agency—

(a) to review and, where appropriate, to make recommendations to the Department or other Department concerned to further, any of the general purposes of this Part;

(b) to review the arrangements for securing that employers, employees, organisations representing employers and employees respectively, and other persons concerned with matters relevant to any of those purposes are provided with an information and advisory service and are kept informed of, and adequately advised on, such matters and, where appropriate, to make recommendations to the Department concerned as to those arrangements;

(c) to make recommendations to the Department concerned as to enforcement policies and special investigations and inquiries in connection with those purposes;

(d) to make recommendations to the Department concerned as to the discharge of the departmental function of making regulations for those purposes;

and the Department concerned shall consider, in respect of any of its functions, the recommendations made by the Agency under this paragraph.

(2) The Agency, in accordance with Article 18, may prepare and issue codes of practice and may approve codes of practice prepared by other persons.

(3) The Agency may, in accordance with proposals approved by the Department concerned,—

(a) make such arrangements as it considers appropriate for—

(i) the carrying out of, and the publication of the results of, research; and

(ii) the provision of training and information; in connection with the purposes of this Part; and

(b) encourage research and the provision of training and information in that connection by others;

(c) generally promote health and safety at work.

(4) The Agency shall—

(a) submit to the Department particulars of what it proposes to do for the purpose of performing its functions under paragraphs (2) and (3); and

(b) subject to sub-paragraph (c), ensure that its activities are in accordance with proposals approved by the Department; and

(c) give effect to any directions given to it by the Department.

Control of the Agency by the Department

14. The Department may—

(a) approve, with or without modifications, any proposals submitted to it in pursuance of Article 13 (4) (a);

(b) give to the Agency at any time such directions as the Department thinks fit with respect to the functions of the Agency.

Additional functions of the Agency

15.—(1) The Agency may—

- (a) make agreements with any government department or other person for that department or person to perform on behalf of the Agency any of the functions of the Agency;
- (b) subject to paragraph (2), make agreements with any Minister of the Crown, government department or public authority for the Agency to perform on behalf of that Minister, department or authority (with or without payment) functions exercisable by the Minister, department or authority, being functions which in the opinion of the Department can appropriately be performed by the Agency in connection with any of the Agency's functions;
- (c) appoint persons or committees of persons to provide the Agency with advice in connection with any of its functions and (without prejudice to the generality of the following sub-paragraph) pay to persons so appointed such remuneration as the Department, with the approval of the Department of the Civil Service, may determine;
- (d) in connection with any of the functions of the Agency, pay to any person such travelling and subsistence allowances and such compensation for loss of remunerative time as the Department, with the approval of the Department of the Civil Service, may determine;
- (e) carry out or arrange for or make payments in respect of, research into any matter connected with any of the Agency's functions, and disseminate or arrange for or make payments in respect of the dissemination of, information derived from such research;
- (f) include, in any arrangements made by the Agency for the provision of facilities or services by it or on its behalf, provision for the making of payments to the Agency or any person acting on its behalf by other parties to the arrangements and by persons who use those facilities or services.

(2) Nothing in paragraph (1) (b) shall authorise the Agency to perform any function of a Minister, department or authority which consists of a power to make regulations or other instruments of a legislative character.

Investigations and inquiries

Investigations and inquiries

16.—(1) This Article applies to the following matters, that is to say any accident, occurrence, situation or other matter whatsoever which the Department concerned thinks it necessary or expedient to investigate for any of the general purposes of this Part or with a view to the making of regulations for those purposes.

(2) The Department concerned may at any time—

- (a) investigate or authorise any other person to investigate, and make a special report on any matter to which this Article applies; or
- (b) cause an inquiry to be held into any such matter.

(3) Any inquiry held by virtue of paragraph (2) (b) shall be held in accordance with regulations, and shall be held in public except where or to the extent that the regulations provide otherwise.

(4) Regulations made under paragraph (3) may in particular include provision—

- (a) conferring on the person holding any such inquiry, and any person assisting him in the inquiry, powers of entry and inspection;
- (b) conferring on any such person powers of summoning witnesses to give evidence or produce documents and power to take evidence on oath and administer oaths or require the making of declarations;
- (c) requiring any such inquiry to be held otherwise than in public where or to the extent that a Minister of the Crown or Head of the Department concerned so directs.

(5) In the case of a special report made by virtue of paragraph (2) (a) the Department concerned may cause the report, or so much of it as that Department thinks fit, to be made public at such time and in such manner as that Department thinks fit.

(6) The Department concerned—

- (a) in the case of an investigation and special report made by virtue of paragraph (2) (a), may pay to the person making it such remuneration and expenses as that Department, with the approval of the Department of the Civil Service, may determine;
- (b) in the case of an inquiry held by virtue of paragraph (2) (b), may pay to the person holding it and to any assessor appointed to assist him such remuneration and expenses, and to persons attending the inquiry as witnesses such expenses, as that Department, with the like approval, may determine; and
- (c) may, to such extent as that Department may determine, defray the other costs, if any, of any such investigation and special report or inquiry.

Health and safety regulations and approved codes of practice

Health and safety regulations

17.—(1) Subject to Article 46, regulations (in this Order referred to as “health and safety regulations”) may provide for any of the general purposes of this Part.

(2) Without prejudice to the generality of paragraph (1), health and safety regulations may for any of the general purposes of this Part make provision for any of the purposes mentioned in Schedule 3.

(3) Health and safety regulations—

- (a) may repeal or modify any of the existing statutory provisions;
- (b) may exclude or modify in relation to any specified class of case any of the provisions of Articles 4 to 10 or any of the existing statutory provisions;
- (c) may make a specified authority or class of authorities responsible, to such extent as may be specified, for the enforcement of any of the relevant statutory provisions.

(4) Health and safety regulations—

- (a) may impose requirements by reference to the approval of the Agency or any other specified body or person;
- (b) may provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time.

(5) Health and safety regulations—

- (a) may provide (either unconditionally or subject to conditions, and with

or without limit of time) for exemptions from any requirement or prohibition imposed by or under any of the relevant statutory provisions;

(b) may enable exemptions from any requirement or prohibition imposed by or under any of the relevant statutory provisions to be granted (either unconditionally or subject to conditions, and with or without limit of time) by any specified person or by any person authorised in that behalf by a specified authority.

(6) Health and safety regulations—

(a) may specify the persons who, in the event of a contravention of a requirement or prohibition imposed by or under the regulations, are to be guilty of an offence, whether in addition to or to the exclusion of other persons;

(b) may provide for any specified defence to be available in proceedings for any offence under the relevant statutory provisions either generally or in specified circumstances;

(c) may exclude proceedings on indictment in relation to offences consisting of a contravention of a requirement or prohibition imposed by or under any of the existing statutory provisions, Articles 4 to 10 or health and safety regulations;

(d) may restrict the punishments (other than the maximum fine on conviction on indictment) which can be imposed in respect of any such offence as is mentioned in sub-paragraph (c).

(7) Without prejudice to Article 33, health and safety regulations may make provision for enabling offences under any of the relevant statutory provisions to be treated as having been committed at any specified place for the purpose of bringing any such offence within the field of responsibility of any enforcing authority or conferring jurisdiction on any court to entertain proceedings for any such offence.

(8) In this Article “specified” means specified in health and safety regulations.

Approval of codes of practice by the Agency

18.—(1) For the purpose of providing practical guidance with respect to the requirements of any provision of Articles 4 to 8 or of health and safety regulations or of any of the existing statutory provisions, the Agency may, subject to paragraph (2)—

(a) approve and issue such codes of practice (whether prepared by it or not) as in its opinion are suitable for that purpose;

(b) approve such codes of practice issued or proposed to be issued otherwise than by the Agency as in its opinion are suitable for that purpose.

(2) The Agency shall not approve a code of practice under paragraph (1) without the consent of the Department concerned, and shall, before seeking its consent, consult—

(a) any government department or other body that appears to the Agency to be appropriate (and in particular, in the case of a code relating to electro-magnetic radiations, the Department of Health and Social Services and the National Radiological Protection Board); and

(b) such government departments and other bodies, if any, as in relation to any matter dealt with in the code, the Agency is required to consult under this Article by virtue of directions given to it by the Department.

(3) Where a code of practice is approved by the Agency under paragraph (1), the Agency shall issue a notice in writing—

(a) identifying the code in question and stating the date on which its approval by the Agency is to take effect; and

(b) specifying for which of the provisions mentioned in paragraph (1) the code is approved.

(4) The Agency may—

(a) revise the whole or any part of any code of practice prepared by it in pursuance of this Article;

(b) approve any revision or proposed revision of the whole or any part of any code of practice for the time being approved under this Article; and the provisions of paragraphs (2) and (3) shall, with the necessary modifications, apply in relation to the approval of any revision under this paragraph as they apply in relation to the approval of a code of practice under paragraph (1).

(5) The Agency may at any time with the consent of the Department concerned withdraw its approval from any code of practice approved under this Article, but before seeking the consent of that Department shall consult the same government departments and other bodies as it would be required to consult under paragraph (2) if it were proposing to approve the code.

(6) Where under paragraph (5) the Agency withdraws its approval from a code of practice approved under this Article, the Agency shall issue a notice in writing identifying the code in question and stating the date on which its approval of it is to cease to have effect.

(7) References in this Part to an approved code of practice are references to that code as it has effect for the time being by virtue of any revision of the whole or any part of it approved under this Article.

(8) The power of the Agency under paragraph (1) (b) to approve a code of practice issued or proposed to be issued otherwise than by the Agency shall include power to approve a part of such a code of practice; and accordingly in this Part “code of practice” may be read as including a part of such a code of practice.

Use of approved codes of practice in criminal proceedings

19.—(1) A failure on the part of any person to observe any provision of an approved code of practice shall not of itself render him liable to any civil or criminal proceedings; but where in any criminal proceedings a party is alleged to have committed an offence by reason of a contravention of any requirement or prohibition imposed by or under any such provision as is mentioned in Article 18 (1) being a provision for which there was an approved code of practice at the time of the alleged contravention, the following paragraph shall have effect with respect to that code in relation to those proceedings.

(2) Any provision of the code of practice which appears to the court to be relevant to the requirement or prohibition alleged to have been contravened shall be admissible in evidence in the proceedings; and if it is proved that there was at any material time a failure to observe any provision of the code which

appears to the court to be relevant to any matter which it is necessary for the prosecution to prove in order to establish a contravention of that requirement or prohibition, that matter shall be taken as proved unless the court is satisfied that the requirement or prohibition was in respect of that matter complied with otherwise than by way of observance of that provision of the code.

(3) In any criminal proceedings—

(a) a document purporting to be a notice issued by the Agency under Article 18 shall be taken to be such a notice unless the contrary is proved; and

(b) a code of practice which appears to the court to be the subject of such a notice shall be taken to be the subject of that notice unless the contrary is proved.

Enforcement

Authorities responsible for enforcement of the relevant statutory provisions

20.—(1) It shall be the duty of the Department concerned to make adequate arrangements for the enforcement of the relevant statutory provisions except to the extent that some other authority is by any of those provisions or by regulations under paragraph (2) made responsible for their enforcement.

(2) Regulations may make a specified authority or authorities of any specified class responsible, to such extent as may be prescribed, for the enforcement of any of the relevant statutory provisions.

(3) Any provision made by regulations under paragraph (2) shall have effect subject to any provision made by health and safety regulations in pursuance of Article 17 (3) (c).

(4) Where any authority other than the Department concerned is by any of the relevant statutory provisions or by regulations under paragraph (2) made responsible for the enforcement of any of those provisions to any extent, that authority shall—

(a) make adequate arrangements for the enforcement of those provisions to that extent; and

(b) perform the duty imposed on it by sub-paragraph (a) and any other functions conferred on it by any of the relevant statutory provisions, and with respect to that performance shall have regard to such recommendations as the Agency may give to it.

Appointment of inspectors

21.—(1) Every enforcing authority may appoint as inspectors (under whatever title it may determine) such persons having suitable qualifications as it thinks necessary for carrying into effect the relevant statutory provisions within its field of responsibility, and may terminate any appointment made under this Article.

(2) Every appointment of a person as an inspector under this Article shall be made in writing specifying which of the powers conferred on inspectors by the relevant statutory provisions are to be exercisable by the person appointed; and an inspector shall in right of his appointment under this Article—

(a) be entitled to exercise only such of those powers as are so specified; and

(b) be entitled to exercise the powers so specified only within the field of responsibility of the authority which appointed him.

(3) So much of an inspector's written appointment as specifies the powers

which he is entitled to exercise may be varied by the enforcing authority which appointed him.

(4) An inspector shall, if so required when exercising or seeking to exercise any power conferred on him by any of the relevant statutory provisions, produce his written appointment or a duly authenticated copy thereof.

Powers of inspectors

22.—(1) Subject to the provisions of Article 21 and this Article, an inspector may, for the purpose of carrying into effect any of the relevant statutory provisions within the field of responsibility of the enforcing authority which appointed him, exercise the powers set out in paragraph (2).

(2) The powers of an inspector referred to in paragraph (1) are the following, namely—

- (a) at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) to enter any premises which he has reason to believe it is necessary for him to enter for the purpose mentioned in paragraph (1);
- (b) to take with him a constable if he has reasonable cause to apprehend any serious obstruction in the execution of his duty;
- (c) without prejudice to sub-paragraph (b), on entering any premises by virtue of sub-paragraph (a) to take with him—
 - (i) any other person duly authorised in writing by his (the inspector's) enforcing authority; and
 - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (d) to make such examination and investigation as may in any circumstances be necessary for the purpose mentioned in paragraph (1);
- (e) as regards any premises which he may enter, to direct that those premises or any part of them, or anything therein, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (d);
- (f) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph (d);
- (g) to take samples of any articles or substances found in any premises which he may enter, and the atmosphere in or in the vicinity of any such premises;
- (h) in the case of any article or substance found in any premises which he may enter, being an article or substance which appears to him to have caused or to be likely to cause danger to health or safety, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purpose mentioned in paragraph (1));
- (i) in the case of any such article or substance as is mentioned in sub-paragraph (h), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine it and do to it anything which he may do under that sub-paragraph;
 - (ii) to ensure that it is not tampered with before his examination of it is completed;

- (iii) to ensure that it is available for use as evidence in any proceedings for an offence under any of the relevant statutory provisions or any proceedings relating to a notice under Article 23 or 24;
- (j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (d) to answer (in the absence of persons other than a person nominated by him to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;
- (k) to require the production of, inspect, and take copies of or of any entry in—
 - (i) any books or documents which by virtue of any of the relevant statutory provisions are required to be kept; and
 - (ii) any other books or documents which it is necessary for him to see for the purposes of any examination or investigation under sub-paragraph (d);
- (l) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this Article;
- (m) any other power which is necessary for the purpose mentioned in paragraph (1).

(3) The Department concerned may by regulations make provision as to the procedure to be followed in connection with the taking of samples under paragraph (2) (g) (including provision as to the way in which samples that have been so taken are to be dealt with).

(4) Where an inspector proposes to exercise the power conferred by paragraph (2) (h) in the case of an article or substance found in any premises, he shall offer to any person who at the time is present in and has responsibilities in relation to those premises, the opportunity to be present at anything which is to be done by virtue of that power unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of the State.

(5) Before exercising the power conferred by paragraph (2) (h) in the case of any article or substance, an inspector shall consult such persons as appear to him 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) Where under the power conferred by paragraph (2) (i) an inspector takes possession of any article or substance found in any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample thereof and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(7) No answer given by a person in pursuance of a requirement imposed under paragraph (2) (j) shall be admissible in evidence against that person or the husband or wife of that person in any proceedings.

(8) Nothing in this Article shall be taken to compel the production by any person of a document of which he would on grounds of legal professional

privilege be entitled to withhold production on an order for discovery in an action in the High Court.

Improvement notices

23. If an inspector is of the opinion that a person—

- (a) is contravening one or more of the relevant statutory provisions; or
- (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,

he may serve on him a notice—

- (i) stating that he is of that opinion;
- (ii) specifying the provision or provisions as to which he is of that opinion;
- (iii) giving particulars of the reasons why he is of that opinion; and
- (iv) requiring that person to remedy the contravention or, as the case may be, the matters occasioning it within such period (ending not earlier than the period within which an appeal against the notice can be brought under Article 26) as may be specified in the notice.

Prohibition notices

24.—(1) This Article applies to any activities which are being or are about to be carried on by or under the control of any person, being activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities are so carried on, apply.

(2) If as regards any activities to which this Article applies an inspector is of the opinion that, as carried on or about 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 risk of serious personal injury, the inspector may serve on that person a notice—

- (a) stating that the inspector is of the said opinion;
- (b) specifying 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, stating that he is of that opinion, and
 - (i) specifying the provision or provisions as to which he is of that opinion; and
 - (ii) giving particulars of the reasons why he is of that opinion; and
- (d) directing that the activities to which the notice relates shall 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.

(3) A direction given in pursuance of paragraph (2) (d) shall take immediate effect if the inspector is of the opinion, and states it, that the risk of serious personal injury is or, as the case may be, will be imminent, and shall have effect at the end of a period specified in the notice in any other case.

Provisions supplementary to Articles 23 and 24

25.—(1) In this Article and Article 26 “a notice” means an improvement notice or a prohibition notice.

(2) A notice may include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions—

- (a) may be framed to any extent by reference to any approved code of practice; and
- (b) may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.

(3) Where any of the relevant statutory provisions applies to a building or any matter connected with a building and an inspector proposes to serve an improvement notice relating to a contravention of that provision in connection with that building or matter, the notice shall not direct any measures to be taken to remedy the contravention of that provision which are more onerous than those necessary to secure conformity with the requirements of any building regulations for the time being in force to which that building or matter would be required to conform if the relevant building were being newly erected unless the provision in question imposes specific requirements more onerous than the requirements of any such building regulations to which the building or matter would be required to conform as aforesaid.

(4) In paragraph (3) “the relevant building”, in the case of a building, means that building, and, in the case of a matter connected with a building, means the building with which the matter is connected.

(5) Before an inspector serves in connection with any premises used or about to be used as a place of work a notice requiring or likely to lead to the taking of measures affecting the means of escape in case of fire with which the premises are or ought to be provided, he shall consult the Fire Authority for Northern Ireland.

- (6) Where a notice which is not to take immediate effect has been served—
 - (a) the notice may be withdrawn by an inspector at any time before the end of the period specified therein in pursuance of Article 23 or Article 24 (3) as the case may be; and
 - (b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.

Appeal against improvement or prohibition notice

26.—(1) A person on whom a notice is served may within such period from the date of its service as may be prescribed appeal to an industrial tribunal; and on such an appeal the tribunal 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 tribunal may in the circumstances think fit.

(2) Where an appeal under this Article is brought against a notice within the period allowed under paragraph (1) then—

- (a) in the case of an improvement notice, the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal;
- (b) in the case of a prohibition notice, the bringing of the appeal shall have the like effect if, but only if, on the application of the appellant the tribunal so directs (and then only from the giving of the direction).

(3) One or more assessors may be appointed for the purposes of any proceedings brought before an industrial tribunal under this Article.

(4) In this Article "industrial tribunal" means a tribunal established under section 13 of the Industrial Training Act (Northern Ireland) 1964 (a).

Power to deal with cause of imminent danger

27.—(1) Where, in the case of any article or substance found by him in any premises which he has power to enter, an inspector has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious personal injury, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).

(2) Before there is rendered harmless under this Article—

(a) any article that forms part of a batch of similar articles; or

(b) any substance,

the inspector shall, if it is practicable for him to do so, take a sample thereof and give to a responsible person at the premises where the article or substance was found by him a portion of the sample marked in a manner sufficient to identify it.

(3) As soon as may be after any article or substance has been seized and rendered harmless under this Article, the inspector shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall—

(a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and

(b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;

and if, where sub-paragraph (b) applies, the inspector cannot after reasonable enquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under sub-paragraph (a).

Power of enforcing authorities to indemnify their inspectors

28. Where—

(a) an action has been brought against an inspector in respect of an act done in the execution or purported execution of any of the relevant statutory provisions; and

(b) the circumstances are such that he is not legally entitled to require the enforcing authority which appointed him to indemnify him,

that authority may, nevertheless, indemnify him against the whole or part of any damages and costs which he may have been ordered to pay or may have incurred, if the authority is satisfied that he honestly believed that the act complained of was within his powers and that his duty as an inspector required or entitled him to do it.

Obtaining and disclosure of information

Obtaining of information

29.—(1) For the purpose of obtaining—

(a) any information which the Agency needs for the discharge of its functions; or

(a) 1964 c. 18 (N.I.).

(b) any information which an enforcing authority needs for the discharge of the authority's functions,

the Department concerned, or the Agency with the consent of the Department concerned, may serve on any person a notice requiring that person to furnish to the Agency or, as the case may be, to the enforcing authority in question such information about such matters as may be specified in the notice, and to do so in such form and manner and within such time as may be so specified.

(2) Without prejudice to section 5 of the Statistics of Trade Act (Northern Ireland) 1949 (a), nothing in section 7 of that Act (which restricts the disclosure of information obtained under that Act) shall prevent or penalise—

(a) the disclosure by a government department to the Agency of information obtained under that Act about any undertaking within the meaning of that Act, being information consisting of the names and addresses of the persons carrying on the undertaking, the nature of the undertaking's activities, the numbers of persons of different descriptions who work in the undertaking, the addresses or places where activities of the undertaking are or were carried on, the nature of the activities carried on there, or the numbers of persons of different descriptions who work or worked in the undertaking there; or

(b) the disclosure by a government department to the Agency of information so obtained which is of a kind specified in a notice in writing given to that department and the Agency by the Department concerned under this sub-paragraph.

(3) In paragraph (2) any reference to government department or the Agency includes respectively a reference to an officer of that body and also, in the case of a reference to the Agency, includes a reference to—

(a) a person performing any functions of the Agency on its behalf by virtue of Article 15 (1) (a);

(b) an officer of a body which is so performing any such functions; and

(c) an adviser appointed in pursuance of Article 15 (1) (c).

(4) A person to whom information is disclosed in pursuance of paragraph (2) shall not use the information for a purpose other than a purpose of the Agency.

Restrictions on disclosure of information

30.—(1) In this Article—

(a) "relevant information" means information obtained by a person under Article 29 (1) or furnished to any person in pursuance of a requirement imposed by any of the relevant statutory provisions; and

(b) "the recipient", in relation to any relevant information, means the person by whom that information was so obtained or to whom that information was so furnished, as the case may be.

(2) Subject to paragraph (3), no relevant information shall be disclosed without the consent of the person by whom it was furnished.

(3) Paragraph (2) shall not apply to—

(a) disclosure of information to the Agency, a government department or any enforcing authority;

(a) 1949 c. 7 (N.I.).

- (b) without prejudice to sub-paragraph (a), disclosure by the recipient of information to any person for the purpose of any function conferred on the recipient by or under any of the relevant statutory provisions;
- (c) without prejudice to sub-paragraph (a), disclosure by the recipient of information to—
 - (i) an officer of a district council who is authorised by that council to receive it,
 - (ii) a constable authorised by the Chief Constable to receive it;
- (d) disclosure by the recipient of information in a form calculated to prevent it from being identified as relating to a particular person or case;
- (e) disclosure of information for the purposes of any legal proceedings or any investigation or inquiry held by virtue of Article 16 (2).

(4) In paragraph (3) any reference to the Agency, a government department or an enforcing authority includes respectively a reference to an officer of that body or authority (including, in the case of an enforcing authority, any inspector appointed by it), and also, in the case of a reference to the Agency, includes a reference to—

- (a) a person performing any functions of the Agency on its behalf by virtue of Article 15 (1) (a);
- (b) an officer of a body which is so performing any such functions; and
- (c) an adviser appointed in pursuance of Article 15 (1) (c).

(5) A person to whom information is disclosed in pursuance of paragraph (3) shall not use the information for a purpose other than—

- (a) in a case falling within sub-paragraph (a) of that paragraph, a purpose of the Agency or of the government department in question, or the purposes of the enforcing authority in question in connection with the relevant statutory provisions, as the case may be;
- (b) in the case of information given to an officer of a district council, the purposes of the council in connection with the relevant statutory provisions or any statutory provision relating to public health or public safety;
- (c) in the case of information given to a constable, the purposes of the police in connection with the relevant statutory provisions or any statutory provision relating to public health, public safety or the safety of the State.

(6) A person shall not disclose any information obtained by him as a result of the exercise of any power conferred by Article 16 (4) (a) or 22 (including, in particular, any information with respect to any trade secret obtained by him in any premises entered by him by virtue of any such power) except—

- (a) for the purposes of his functions; or
- (b) for the purposes of any legal proceedings or any investigation or inquiry held by virtue of Article 16 (2) or for the purposes of a report of any such proceedings or inquiry or of a special report made by virtue of Article 16 (2); or
- (c) with the relevant consent.

(7) In paragraph (6) “the relevant consent” means, in the case of information furnished in pursuance of a requirement imposed under Article 22, the consent of the person who furnished it, and, in any other case, the consent of a

person having responsibilities in relation to the premises where the information was obtained.

(8) Notwithstanding anything in paragraph (6) an inspector shall, in circumstances in which it is necessary to do so for the purpose of assisting in keeping persons (or the representatives of persons) employed at any premises adequately informed about matters affecting their health, safety and welfare, give to such persons or their representatives the following descriptions of information, that is to say—

- (a) factual information obtained by him as mentioned in that paragraph which relates to those premises or anything which was or is therein or was or is being done therein; and
- (b) information with respect to any action which he has taken or proposes to take in or in connection with those premises in the performance of his functions;

and, where an inspector does as aforesaid, he shall give the like information to the employer of the first-mentioned persons.

(9) Notwithstanding anything in paragraph (6), a person who has obtained such information as is referred to in that paragraph may furnish to a person who appears to him to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter, a written statement of relevant facts observed by him in the course of exercising any of the powers referred to in that paragraph.

Provisions as to offences

Offences

31.—(1) Any person who—

- (a) fails to discharge a duty to which he is subject by virtue of Articles 4 to 8;
- (b) contravenes Article 9 or 10;
- (c) contravenes any health and safety regulations or any requirement or prohibition imposed under any such regulations (including any requirement or prohibition to which he is subject by virtue of the terms of or any condition or restriction attached to any licence, approval, exemption or other authority issued, given or granted under the regulations);
- (d) contravenes any requirement imposed by or under regulations under Article 16 or intentionally obstructs any person in the exercise of his powers under that Article;
- (e) contravenes any requirement imposed by an inspector under Article 22 or 27;
- (f) prevents or attempts to prevent any other person from appearing before an inspector or from answering any question to which an inspector may by virtue of Article 22 (2) require an answer;
- (g) contravenes any requirement or prohibition imposed by an improvement notice or a prohibition notice (including any such notice as modified on appeal);
- (h) intentionally obstructs an inspector in the exercise or performance of his powers or duties;
- (i) contravenes any requirement imposed by a notice under Article 29 (1);
- (j) uses or discloses any information in contravention of Article 29 (4) or 30;
- (k) makes a statement which he knows to be false or recklessly makes a statement which is false where the statement is made—

- (i) in purported compliance with a requirement to furnish any information imposed by or under any of the relevant statutory provisions; or
 - (ii) for the purpose of obtaining the issue of a document under any of the relevant statutory provisions to himself or another person;
 - (l) intentionally makes a false entry in any register, book, notice or other document required by or under any of the relevant statutory provisions to be kept, served or given or, with intent to deceive, makes use of any such entry which he knows to be false;
 - (m) with intent to deceive, forges or uses a document issued or authorised to be issued under any of the relevant statutory provisions or required for any purpose thereunder or makes or has in his possession a document so closely resembling any such document as to be calculated to deceive;
 - (n) falsely pretends to be an inspector;
 - (o) fails to comply with an order made by a court under Article 39;
- shall be guilty of an offence.

(2) A person guilty of an offence under sub-paragraph (d), (f), (h) or (n) of paragraph (1), or under sub-paragraph (e) of that paragraph consisting of contravening a requirement imposed by an inspector under Article 22 shall be liable on summary conviction to a fine not exceeding £1,000.

(3) A person guilty of an offence under paragraph 7 of Schedule 4 shall be liable on summary conviction to a fine not exceeding £100.

(4) Subject to any provision made under Article 17 (6) (d) a person guilty of an offence under sub-paragraph (a), (b), (c), (g), (i) to (m) and (o) of paragraph (1); or of an offence under sub-paragraph (e) of that paragraph (other than the offence mentioned in paragraph (2)); or of an offence under any of the existing statutory provisions, being an offence for which no other penalty is specified, shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,000;
- (b) on conviction on indictment—
 - (i) if the offence is one to which this head applies, to imprisonment for a term not exceeding two years, or a fine, or both;
 - (ii) if the offence is not one to which head (i) applies, to a fine.

(5) Paragraph (4) (b) (i) applies to the following offences—

- (a) an offence consisting of contravening any of the relevant statutory provisions by doing otherwise than under the authority of a licence issued by the Department concerned something for the doing of which such a licence is necessary under the relevant statutory provisions;
- (b) an offence consisting of contravening a term of or a condition or restriction attached to any such licence as is mentioned in sub-paragraph (a);
- (c) an offence consisting of acquiring or attempting to acquire, possessing or using an explosive article or substance (within the meaning of any of the relevant statutory provisions) in contravention of any of the relevant statutory provisions;
- (d) an offence under paragraph (1) (g) consisting of contravening a requirement or prohibition imposed by a prohibition notice;
- (e) an offence under paragraph (1) (j).

(6) Where a person is convicted of an offence under sub-paragraph (g) or (o) of paragraph (1), and where sub-paragraph (g) or, as the case may be, sub-paragraph (o) is again contravened within one year after the conviction he shall (subject to Article 39 (3)) be liable on summary conviction to a further fine not exceeding £100 for every day subsequent to the day on which he is first convicted of an offence under paragraph (1) on which it is so contravened.

(7) In this Article “forge” has the same meaning as in the Forgery Act 1913 (a).

Extension of time for bringing summary proceedings

32.—(1) Where—

- (a) a special report on any matter to which Article 16 applies is made under paragraph (2) (a) of that Article; or
- (b) a report is made by the person holding an inquiry into any such matter under paragraph (2) (b) of that Article; or
- (c) a coroner’s inquest is held touching the death of any person whose death may have been caused by an accident which happened while he was at work or by a disease which he contracted or probably contracted at work or by any accident, act or omission which occurred in connection with the work of any person whatsoever;

and it appears from the report or, in a case falling within sub-paragraph (c), 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 report or 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 making of the report or, in a case falling within sub-paragraph (c), within three months of the conclusion of the inquest.

(2) Where an offence under any of the relevant statutory provisions is committed by reason of a failure to do something at or within a time fixed by or under any of those provisions, the offence shall be deemed to continue until that thing is done.

(3) Summary proceedings for an offence to which this paragraph applies may be commenced at any time within six months from the date on which there comes to the knowledge of a responsible enforcing authority evidence sufficient in the opinion of that authority to justify a prosecution for that offence; and for the purposes of this paragraph—

- (a) a certificate of an enforcing authority stating that such evidence came to its knowledge on a specified date shall be conclusive evidence of that fact; and
- (b) a document purporting to be such a certificate and to be signed by or on behalf of the enforcing authority in question shall be presumed to be such a certificate unless the contrary is proved.

(4) Paragraph (3) applies to any offence under any of the relevant statutory provisions which a person commits under any provision or requirement to which he is subject as the designer, manufacturer, importer or supplier of any thing; and in that paragraph “responsible enforcing authority” means an enforcing authority within whose field of responsibility the offence in question lies, whether under Article 33 or otherwise.

Venue

33. An offence under any of the relevant statutory provisions committed in connection with any plant or substance may, if necessary for the purpose of bringing the offence within the field of responsibility of any enforcing authority or conferring jurisdiction on any court to entertain proceedings for the offence, be treated as having been committed at the place where that plant or substance is for the time being.

Offences due to fault of other person

34.—(1) Where the commission by any person of an offence under any of the relevant statutory provisions is due to the act or default of some other person, that other person shall be guilty of an offence, and a person may be charged with and convicted of the offence under this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where there would be or have been the commission of an offence under Article 31 by the Crown but for the circumstance that that Article does not bind the Crown, and that fact is due to the act or default of a person other than the Crown, that person shall be guilty of the offence which, but for that circumstance, the Crown would be committing or would have committed, and may be charged with and convicted of that offence accordingly.

(3) The provisions of this Article are subject to any provision made under Article 17 (6).

Restriction on institution of proceedings

35. Proceedings for an offence under any of the relevant statutory provisions shall not be instituted except by an inspector or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

Prosecutions by inspectors

36. An inspector, if authorised in that behalf by the enforcing authority which appointed him, may, although not of counsel or a solicitor, prosecute before a court of summary jurisdiction proceedings for an offence under any of the relevant statutory provisions.

Onus of proving limits of what is practicable etc.

37. In any proceedings for an offence under any of the relevant statutory provisions consisting of a failure to comply with a duty or requirement to do something so far as is practicable or so far as is reasonably practicable, it shall be for the accused to prove (as the case may be) that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement.

Evidence

38.—(1) Where an entry is required by any of the relevant statutory provisions to be made in any register or other record, the entry, if made, shall, as against the person by or on whose behalf it was made, be admissible as evidence.

(2) Where an entry which is so required to be so made with respect to the observance of any of the relevant statutory provisions has not been made, that fact shall be admissible as evidence.

Power of court to order cause of offence to be remedied and, in certain cases, forfeiture

39.—(1) Where a person is convicted of an offence under any of the relevant

statutory provisions in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matters.

(2) The time fixed by an order under paragraph (1) may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) to remedy any matters, that person shall not be liable under any of the relevant statutory provisions in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under paragraph (2).

(4) Subject to paragraph (5), the court by or before which a person is convicted of an offence such as is mentioned in Article 31 (5) (c) in respect of any such explosive article or substance as is there mentioned may order the article or substance in question to be forfeited and either destroyed or dealt with in such other manner as the court may order.

(5) The court shall not order anything to be forfeited under paragraph (4) where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

Financial provisions

Financial provisions

40.—(1) The Department shall pay to the Agency such sums as the Department, with the approval of the Department of Finance may determine are appropriate for the purpose of enabling the Agency to perform its functions.

(2) Regulations may provide for such fees as may be fixed by or determined under the regulations to be payable for or in connection with the performance by or on behalf of any authority to which this paragraph applies of any function conferred on that authority by or under any of the relevant statutory provisions.

(3) Paragraph (2) applies to the following authorities, namely the Agency, the Department concerned, every enforcing authority, and any other person on whom any function is conferred by or under any of the relevant statutory provisions.

(4) Regulations under this Article may specify the person by whom any fee payable under the regulations is to be paid; but no such fee shall be made payable by a person in any of the following capacities, namely an employee, a person seeking employment, a person training for employment, and a person seeking training for employment.

(5) In paragraph (4) the references to a person training for employment and a person seeking training for employment shall include respectively a person attending an industrial rehabilitation course provided under the Disabled Persons (Employment) Act (Northern Ireland) 1945 (a) and a person seeking to attend such a course.

(6) For the purposes of this Article the performance by an inspector of his functions shall be treated as the performance by the enforcing authority which

(a) 1945 c. 6 (N.I.).

appointed him of functions conferred on that authority by or under any of the relevant statutory provisions.

Miscellaneous and supplementary

Representations in connection with licensing provisions in the relevant statutory provisions

41.—(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 of Schedule 4.

(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 (a), 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
 - (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 (b);

“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.

Default powers

42.—(1) The Department concerned may cause such local or other inquiries to be held as that Department thinks expedient in connection with any matter

(a) 1965 c. 57.

(b) 1946 c. 80.

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.

Civil liability

43.—(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).

Application to Crown

44.—(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 (a) shall apply accordingly.

Adaptation of enactments to metric units or appropriate metric units

45.—(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.

Regulations under the relevant statutory provisions

46.—(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 recommendations submitted by the Agency under Article 13 (1) (d) or independently of any such recommendations; but the Department concerned shall not exercise that power independently of such recommendations unless that Department has consulted the Agency 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 recommenda-

(a) 1946 c. 36.

tions as are there mentioned with modifications, that Department shall, before making the regulations, consult the Agency.

(3) Where the Agency proposes to submit under Article 13 (1) (d) any such recommendations as are mentioned in paragraph (1) except recommendations 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 Agency 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 and the National Radiological Protection Board);
- (b) such government departments and other bodies, if any, as, in relation to any matter dealt with in the proposals, the Agency is required to consult, under this paragraph by virtue of directions given to it by the Department.

Exclusion of application to domestic employment

47. 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.

PART III

THE EMPLOYMENT MEDICAL ADVISORY SERVICE

The employment medical advisory service

48.—(1) There shall be established within the Department an employment medical advisory service, which shall have the functions of—

- (a) securing that the Agency, government departments and others concerned with the health of employed persons or of persons seeking or training for employment can be kept informed of, and adequately advised on, matters of which they ought respectively to take cognisance concerning the safeguarding and improvement of the health of those persons;
- (b) giving to employed persons and persons seeking or training for employment information and advice on health in relation to employment and training for employment;
- (c) advising the Department concerned on matters relating to health and safety at work.

(2) In paragraph (1)—

- (a) the reference to persons training for employment shall include persons attending industrial rehabilitation courses provided by virtue of the Disabled Persons (Employment) Act (Northern Ireland) 1945; and
- (b) the reference to persons (other than the Agency and the government departments mentioned therein) concerned with the health of employed persons or of persons seeking or training for employment shall be taken to include organisations representing employers, employees and occupational health practitioners respectively.

(3) The Department shall appoint persons to be employment medical advisers, and may appoint such other officers and servants as it, subject to the approval as to numbers of the Department of the Civil Service, may determine.

(4) A person shall not be qualified to be appointed, or to be, an employment medical adviser unless he is a fully registered medical practitioner.

(5) The Department may determine the cases and circumstances in which employment medical advisers are to perform the duties or exercise the powers conferred on employment medical advisers by or under this Order or otherwise.

- (6) The Department may pay—
- (a) to employment medical advisers such salaries or such fees and travelling or other allowances; and
 - (b) to other persons called upon to give advice in connection with the functions of the employment medical advisory service such travelling or other allowances or compensation for loss of remunerative time; and
 - (c) to persons attending for medical examinations conducted by, or in accordance with arrangements made by, employment medical advisers (including pathological, physiological and radiological tests and similar investigations so conducted) such travelling or subsistence allowances or such compensation for loss of earnings;

as the Department, with the approval of the Department of the Civil Service may determine.

(7) The Department may for the purposes mentioned in paragraph (1), and for the purpose of assisting employment medical advisers in the performance of their functions, investigate or assist in, arrange for or make payments in respect of the investigation of problems arising in connection with any such matters as are so mentioned or otherwise in connection with the functions of employment medical advisers, and for the purpose of investigation or assisting in the investigation of such problems may provide and maintain such laboratories and other services as appear to the Department to be requisite.

Fees

49.—(1) The Department may by regulations provide for such fees as may be fixed by or determined under the regulations to be payable for or in connection with the performance by the employment medical advisory service of any function conferred under this Part or otherwise.

(2) The provisions of paragraphs (4) and (5) of Article 40 shall apply in relation to regulations under this Article with the modification that references to that Article shall be construed as references to this Article.

Supplementary

50. The Department of Health and Social Services shall arrange with each Health and Social Services Board for one of its officers who is a fully registered medical practitioner to furnish, on the application of an employment medical adviser, such particulars of the school medical record of a person who has not attained the age of eighteen and such other information relating to his medical history in the possession of that Board as the adviser may reasonably require for the efficient performance of his functions; so, however, that no particulars or information about any person which may be furnished to an adviser under this Article shall (without the consent of that person) be disclosed by the adviser otherwise than for the efficient performance of his functions.

Amendment of the Factories Act (Northern Ireland) 1965

51.—(1) The position and functions of appointed factory doctors are hereby abolished; and accordingly the provisions of the Factories Act (Northern Ireland) 1965 (a) set out in Part I of Schedule 5 shall have effect subject to the amendments specified in that Part.

(2) The provisions of that Act of 1965 set out in Part II of Schedule 5 shall have effect subject to the amendments specified in that Part.

(3) The transitional provision specified in Part III of Schedule 5 shall have effect for the purposes of this Order.

(a) 1965 c. 20 (N.I.).

PART IV

MISCELLANEOUS AND GENERAL

Amendment of the Radiological Protection Act 1970

52.—(1) In section 1 of the Radiological Protection Act 1970 (a) (establishment and functions of the National Radiological Protection Board)—

(a) after subsection (8) there shall be inserted the following subsections—

“(9) In carrying out such of their functions as relate to matters to which the functions of the Health and Safety Agency for Northern Ireland relate, the Board shall (without prejudice to subsection (7) above) act in consultation with the Agency and have regard to the opinion of the Agency with respect to such matters.

(10) Without prejudice to subsection (6) or (7) above, it shall be the duty of the Board, if so directed by the Health Ministers, to enter into an agreement with the Health and Safety Agency for Northern Ireland or, as the case may be, the Department concerned within the meaning of the Health and Safety at Work (Northern Ireland) Order 1978, for the Board to carry out on behalf of the Agency or that Department such of the Agency’s or, as the case may be, that Department’s functions relating to ionising or other radiations (including those which are not electro-magnetic) as may be determined by or in accordance with the direction; and the Board shall have power to carry out any agreement entered into in pursuance of a direction under this subsection.

(11) The requirement as to consultation in subsection (7) above shall not apply to a direction under subsection (10).”;

(b) in subsection (8) after the words “subsection (7)” there shall be inserted the words “or (10)”.

(2) In section 5 (1) (c) of that Act (by virtue of which premises occupied by the Board are subject to inspection by inspectors appointed under the Factories Act (Northern Ireland) 1965) for sub-paragraphs (ii) and (iii) there shall be substituted the following sub-paragraph—

“(ii) for the words from “inspectors appointed” to the end of the subsection there shall be substituted the words “inspectors appointed under Article 21 of the Health and Safety at Work (Northern Ireland) Order 1978.”.

Application to explosives

53.—(1) This Order (except Article 41) shall apply to matters under the Explosives Acts (Northern Ireland) 1875 to 1970 or the Explosives (Northern Ireland) Order 1972 as it applies to matters under any of the existing statutory provisions subject to the following modifications—

(a) for any reference to the Department concerned there shall be substituted a reference to the Secretary of State;

(b) in Article 2 (2)—

(i) the definition of “Department concerned” shall be omitted;

(ii) in the definition of “statutory provision” for sub-paragraph (a) there shall be substituted the following sub-paragraph—

“(a) “existing statutory provisions” means the provisions of the Explosives Acts (Northern Ireland) 1875 to 1970 or the Explosives (Northern Ireland) Order 1972 and of any regulations, orders or other instruments of a legislative character made or having effect under any of those provisions;”;

(c) in Article 54 (1) the words “made subject to negative resolution” shall be omitted;

(d) Article 55 (1) shall be omitted.

(2) An order under Article 54 (1), and regulations under this Order, made by the Secretary of State 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.

General power to repeal or modify statutory provisions

54.—(1) The Department concerned may by order made subject to negative resolution or by regulations repeal or modify any provision to which this paragraph applies if it appears to that Department that the repeal or, as the case may be, the modification of that provision is necessary or expedient in consequence of or in connection with any provision made by or under Part II.

(2) Paragraph (1) applies to any provision, not being among the relevant statutory provisions, which—

(a) is contained in this Order or in any other statutory provision passed or made before the making of this Order; or

(b) applies, excludes or for any other purpose refers to any of the relevant statutory provisions and is contained in any statutory provision not falling within paragraph (a).

(3) An order or regulations under paragraph (1) may contain such supplemental and consequential provisions as the Department concerned considers necessary for giving full effect to the order or regulations.

(4) Without prejudice to the generality of paragraph (1), the modifications which may be made by an order or regulations thereunder include modifications relating to the enforcement of provisions to which this Article applies (including the appointment of persons for the purpose of such enforcement, and the powers of persons so appointed).

(5) Before making an order or regulations under this Article, the Department concerned shall consult such bodies as appear to that Department to be appropriate.

Regulations

55.—(1) Regulations under this Order shall be subject to negative resolution.

(2) Regulations under this Order may contain incidental, supplementary and transitional provisions.

Transitional provisions, amendments and repeals

56.—(1) The statutory provisions specified in Schedule 6 shall have effect subject to the amendments specified in that Schedule (being minor amendments or amendments consequential on the provisions of this Order).

(2) The statutory provisions specified in Schedule 7 are hereby repealed to the extent specified in column 3 of that Schedule.

(3) An order under Article 1 (2) may make such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into operation, including such adaptations of those provisions or any provision of this Order then in operation as appear to him to be necessary or expedient in consequence of the partial operation of this Order.

N. E. Leigh,
Clerk of the Privy Council.

SCHEDULES

Articles 2 (2) and 3.

SCHEDULE 1

EXISTING STATUTORY PROVISIONS

1. The provisions of the Acts mentioned in the following table which are specified in the third column of the table.

Chapter	Short Title	Provisions which are existing statutory provisions
1882 c. 22.	The Boiler Explosions Act 1882.	The whole Act.
1890 c. 35.	The Boiler Explosions Act 1890.	The whole Act.
1919 c. 23.	The Anthrax Prevention Act 1919.	Sections 2 and 3.
1920 c. 65.	The Employment of Women, Young Persons and Children Act 1920.	The whole Act.
1922 c. 35.	The Celluloid and Cinematograph Film Act 1922.	The whole Act.
1927 c. 19.	The Quarries Act (Northern Ireland) 1927.	The whole Act except section 12B.
1928 c. 10.	The Roads Improvement Act (Northern Ireland) 1928.	Section 7.
1929 c. 13.	The Petroleum (Consolidation) Act (Northern Ireland) 1929.	The whole Act.
1936 c. 22.	The Hours of Employment (Conventions) Act 1936.	The whole Act.
1937 c. 4.	The Petroleum (Transfer of Licences) Act (Northern Ireland) 1937.	The whole Act.
1938 c. 4.	The Hydrogen Cyanide (Fumigation) Act (Northern Ireland) 1938.	The whole Act.
1948 c. 37.	The Radioactive Substances Act 1948.	Section 5 (1) (a).
1954 c. 5.	The Agriculture (Poisonous Substances) Act (Northern Ireland) 1954.	The whole Act.
1959 c. 24.	The Agriculture (Safety, Health and Welfare Provisions) Act (Northern Ireland) 1959.	The whole Act.
1965 c. 20.	The Factories Act (Northern Ireland) 1965.	The whole Act except section 135.

Chapter	Short Title	Provisions which are existing statutory provisions
1965 c. 57.	The Nuclear Installations Act 1965.	Sections 1, 3 to 6, 22 and 24 and Schedule 2.
1966 c. 26.	The Office and Shop Premises Act (Northern Ireland) 1966.	The whole Act.
1969 c. 6.	The Mines Act (Northern Ireland) 1969.	The whole Act except section 129.

2. The provisions of any regulations, orders or other instruments of a legislative character made or having effect under any provision specified in that table.

SCHEDULE 2

Article 12 (4).

THE HEALTH AND SAFETY AGENCY FOR NORTHERN IRELAND

Status

1. The Agency shall be a body corporate to which, subject to paragraph 15, section 19 of the Interpretation Act (Northern Ireland) 1954 shall apply.

2. The Agency shall not be regarded as the servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown; and the Agency's property shall not be regarded as property of or property held on behalf of the Crown.

Members

3. Persons may be appointed as whole-time or part-time members of the Agency.

4. Subject to paragraphs 5 and 6 a person shall hold and vacate office as chairman or member of the Agency in accordance with the terms of his appointment.

5. A person may at any time resign office as chairman or member of the Agency by notice in writing to the Department.

6.—(1) The Head of the Department may at any time remove a person from office as chairman or member of the Agency if satisfied that—

(a) he has been absent from meetings of the Agency for a period longer than six consecutive months without the permission of the Agency; or

(b) he has been convicted of a criminal offence; or

(c) he has become bankrupt or made an arrangement with his creditors; or

(d) he is incapacitated by physical or mental illness; or

(e) he is otherwise unable or unfit to perform his duties.

(2) If the chairman ceases to be a member of the Agency he shall also cease to be chairman.

7. Past service as chairman or member of the Agency is no bar to reappointment.

Remuneration of members

8. The Department may pay or make such payments towards the provision of such remuneration, allowances (including allowances for expenses), pensions or gratuities to or in respect of the chairman and other members of the Agency, or any of them, as with the approval of the Department of the Civil Service, it may determine.

Proceedings

9. The Agency may regulate its own procedure and business including its quorum.

10. A person authorised in writing in that behalf by the Department shall be entitled to attend any meeting of the Agency and to take part in the proceedings at the meeting, but not to vote.

11. The validity of any proceedings of the Agency shall not be affected by any vacancy in the office of chairman or member of the Agency or by any defect in the appointment of the chairman or any member.

The Seal

12. The fixing of the common seal of the Agency shall be authenticated by the signature of the chairman of the Agency or some other member thereof authorised either generally or specially by the Agency to act for that purpose.

Instruments

13. A document purporting to be duly executed under the common seal of the Agency shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

14. Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the Agency by any person generally or specially authorised by the Agency to act for that purpose, and any document purporting to be such a contract or instrument shall be deemed to be such a contract or instrument until the contrary is proved.

Staff

15. It shall be the duty of the Department to provide for the Agency such officers and servants as are requisite for the proper discharge of the Agency's functions as approved by the Department under Article 13 and so much of section 19 of the Interpretation Act (Northern Ireland) 1954 as relates to the right to employ staff shall not be exercised by the Agency without the consent of the Department; and any reference in this Order to an officer or servant of the Agency is a reference to an officer or servant provided for the Agency in pursuance of this paragraph.

Performance of functions

16. The Agency may authorise any member of the Agency or any officer or servant of the Agency to perform on behalf of the Agency such of the Agency's functions (including the function conferred on the Agency by this paragraph) as are specified in the authorisation.

17. The Agency with the consent of the Department concerned may appoint officers from that Department as assessors to assist the Agency in the discussion of any matter relating to its functions.

Accounts and reports

18.—(1) The Agency shall keep proper accounts in such form as may be approved by the Department, and proper records in relation to the accounts and shall prepare in respect of the period ending on 31st March 1979 and in respect of each subsequent financial year a statement of accounts in such form as the Department with the approval of the Department of Finance, may direct.

(2) The accounts of the Agency shall be audited by auditors appointed by the Agency with the approval of the Department and shall be vouched to the satisfaction of such auditors.

(3) The Agency shall, at such time in each year as the Department may direct, transmit copies of the annual statement of accounts certified by the auditors to the Department and to the Comptroller and Auditor-General.

(4) The Comptroller and Auditor-General shall examine and report on each annual statement received by him in pursuance of this paragraph and shall send copies of his report to the Department and may, in connection with such examination, examine any accounts kept by the Agency and any records relating thereto.

(5) A copy of every annual statement of accounts of the Agency and a copy of the Comptroller and Auditor-General's report thereon shall be laid by the Head of the Department before the Assembly.

19. The Agency shall make to the Department as soon as possible after the end of each financial year, a report on the performance of its functions during that year; and the Head of the Department shall lay a copy of each report made to the Department under this paragraph before the Assembly.

SCHEDULE 3

Article 17.

SUBJECT-MATTER OF HEALTH AND SAFETY REGULATIONS

1.—(1) Regulating or prohibiting—

- (a) the manufacture, supply or use of any plant;
- (b) the manufacture, supply, keeping or use of any substance;
- (c) the carrying on of any process or the carrying out of any operation.

(2) Imposing requirements with respect to the design, construction, guarding, siting, installation, commissioning, examination, repair, maintenance, alteration, adjustment, dismantling, testing or inspection of any plant.

(3) Imposing requirements with respect to the marking of any plant or of any articles used or designed for use as components in any plant, and in that connection regulating or restricting the use of specified markings.

(4) Imposing requirements with respect to the testing, labelling or examination of any substance.

(5) Imposing requirements with respect to the carrying out of research in connection with any activity mentioned in sub-paragraphs (1) to (4).

2.—(1) Prohibiting or regulating the transport of articles or substances of any specified description.

(2) Imposing requirements with respect to the manner and means of transporting articles or substances of any specified description, including requirements with respect to the construction, testing and marking of containers and means of transport and the packaging and labelling of articles or substances in connection with their transport.

3.—(1) Prohibiting the carrying on of any specified activity or the doing of any specified thing except under the authority and in accordance with the terms and conditions of a licence, or except with the consent or approval of a specified authority.

(2) Providing for the grant, renewal, variation, transfer and revocation of licences (including the variation and revocation of conditions attached to licences).

4. Requiring any person, premises or thing to be registered in any specified circumstances or as a condition of the carrying on of any specified activity or the doing of any specified thing.

5.—(1) Requiring, in specified circumstances, the appointment (whether in a specified capacity or not) of persons (or persons with specified qualifications or experience, or both) to perform specified functions, and imposing duties or conferring powers on persons appointed (whether in pursuance of the regulations or not) to perform specified functions.

(2) Restricting the performance of specified functions to persons possessing specified qualifications or experience.

6. Regulating or prohibiting in specified circumstances the employment of persons.

7.—(1) Requiring the making of arrangements for securing the health of persons at work or other persons, including arrangements for medical examinations and health surveys.

(2) Requiring the making of arrangements for monitoring the atmospheric or other conditions in which persons work.

8. Imposing requirements with respect to any matter affecting the conditions in which persons work, including in particular such matters as the structural condition and stability of premises, the means of access to and egress from premises, cleanliness, temperature, lighting, ventilation, overcrowding, noise, vibrations, ionising and other radiations, dust and fumes.

9. Securing the provision of specified welfare facilities for persons at work, including in particular such things as an adequate water supply, sanitary conveniences, washing and bathing facilities, ambulance and first-aid arrangements, cloakroom accommodation, sitting facilities and refreshment facilities.

10. Imposing requirements with respect to the provision and use in specified circumstances of protective clothing or equipment, including clothing affording protection against the weather.

11. Requiring in specified circumstances the taking of specified precautions in connection with the risk of fire.

12.—(1) Prohibiting or imposing requirements in connection with the emission within any premises of any specified gas, smoke or dust or any other specified substance whatsoever.

(2) Prohibiting or imposing requirements in connection with the emission of noise, vibrations or any ionising or other radiations within any premises.

(3) Imposing requirements with respect to the monitoring of any such emission as is mentioned in sub-paragraphs (1) and (2).

13. Imposing requirements with respect to the instruction, training and supervision of persons at work.

14.—(1) Requiring, in specified circumstances, specified matters to be notified in a specified manner to specified persons.

(2) Empowering inspectors in specified circumstances to require persons to submit written particulars of measures proposed to be taken to achieve compliance with any of the relevant statutory provisions.

15. Imposing requirements with respect to the keeping and preservation of records and other documents, including plans and maps.

16. Imposing requirements with respect to the management of animals.

17. The following purposes as regards premises of any specified description where persons work, namely—

(a) requiring precautions to be taken against dangers to which the premises or persons therein are or may be exposed by reason of conditions (including natural conditions) existing in the vicinity;

(b) securing that persons in the premises leave them in specified circumstances.

18. Conferring, in specified circumstances involving a risk of fire or explosion, power to search a person or any article which a person has with him for the purpose of ascertaining whether he has in his possession any article of a specified kind likely in those circumstances to cause a fire or explosion, and power to seize and dispose of any article of that kind found on such a search.

19. Restricting, prohibiting or requiring the doing of any specified thing where any accident or other occurrence of a specified kind has occurred.

20. As regards cases of any specified class, being a class such that the variety in the circumstances of particular cases within it calls for the making of special provision for particular cases, any of the following purposes, namely—

- (a) conferring on employers or other persons power to make rules or give directions with respect to matters affecting health or safety;
- (b) requiring employers or other persons to make rules with respect to any such matters;
- (c) empowering specified persons to require employers or other persons either to make rules with respect to any such matters or to modify any such rules previously made by virtue of this paragraph; and
- (d) making admissible in evidence without further proof, in such circumstances and subject to such conditions as may be specified, documents which purport to be copies of rules or rules of any specified class made under this paragraph.

21. Conferring on any district council power to make byelaws with respect to any specified matter, specifying the authority or persons by whom any byelaws made in the exercise of that power need to be confirmed, and generally providing for the procedure to be followed in connection with the making of any such byelaws.

Interpretation

22.—(1) In this Schedule “specified” means specified in health and safety regulations.

(2) Any mention in this Schedule of a purpose that falls within any more general purpose mentioned therein is without prejudice to the generality of the more general purpose.

SCHEDULE 4

Article 41 (1).

REPRESENTATIONS IN CONNECTION WITH LICENSING PROVISIONS

1. The Department concerned shall from time to time prepare a panel of not less than three persons each of whom shall be a practising barrister-at-law or a practising solicitor of the Supreme Court of Judicature in Northern Ireland, in either case of not less than seven years standing.

2.—(1) Where a person, not later than the expiration of fourteen days from the date of the service on him by an authority having power to issue licences (other than nuclear site licences) under any of the relevant statutory provisions, of notice of any matter such as is mentioned in Article 41 (1) (a) to (d), serves on the Department concerned notice in writing of his intention to make representations under Article 41 that Department shall send to him a copy of the panel mentioned in paragraph (1) which is for the time being in force.

(2) On the receipt by a person of a copy of the panel under sub-paragraph (1), that person may select from the panel the name of a member thereof and may, not later than twenty-eight days from the date on which the copy of the panel was so sent to him, serve on that Department a notice in writing naming the member selected and stating the matters which he questions.

(3) On the receipt by the Department concerned of a notice served under sub-paragraph (2) those matters, to the extent that they are within the application of Article 41, shall stand referred to the member of the panel so named.

3. The Arbitration Act (Northern Ireland) 1937 (a) shall not apply in relation to any reference under this Schedule.

4. The Department concerned may pay to a person acting as a referee on a reference under this Schedule fees and travelling and other allowances in respect of his services in accordance with such scales and subject to such conditions as that Department may determine with the approval of the Department of the Civil Service.

5. A referee acting under this Schedule may by notice in writing require any person—

(a) 1937 c. 8 (N.I.)

- (a) to attend at the time and place set forth in the notice to give evidence or to produce any books or documents in his custody or under his control which relate to any matter in question on the reference; or
- (b) to furnish within such reasonable period as is specified in the notice such information relating to any matter in question on the reference as the referee may think fit and as the person so required is able to furnish;

so however that nothing in this paragraph shall empower the referee to require any person to produce any book or document or to answer any question which he would be entitled, on the ground of privilege or otherwise, to refuse to produce or to answer if the hearing of the reference were a proceeding in a court of law.

6. A referee may administer oaths and examine witnesses on oath and may accept in lieu of evidence on oath by any person a statement in writing by that person.

7. Any person who refuses or wilfully neglects to attend in obedience to a notice under paragraph 5, or to give evidence, or who wilfully alters, suppresses, conceals, destroys or refuses to produce any book or document which he may be required to produce by any such notice, or who refuses or wilfully neglects to furnish any information which he is required to furnish under sub-paragraph (b) of paragraph 5, shall be guilty of an offence.

8. The parties to the reference may appear—

- (a) in the case of the person making the representations, in person, or by solicitor or counsel; or
- (b) in the case of the authority by an authorised officer or by solicitor or counsel;

and may cross-examine witnesses.

9. The following provisions shall have effect with respect to the confirmation or quashing of the decision of any authority on any matter referred to a referee under this Schedule namely—

- (a) subject to sub-paragraph (b), if no ground of objection to the decision of the authority is established to the satisfaction of the referee, he shall confirm that decision;
- (b) if no such ground of objection is so established, but the referee is nevertheless of opinion that the grounds upon which that decision was made are insignificant, or so trivial that that decision should not be upheld, he may quash that decision;
- (c) if such a ground of objection is so established, the referee shall quash that decision.

10. Where the referee quashes a decision of any authority as mentioned in sub-paragraph (b) of paragraph 9 he shall state his reasons for the opinion mentioned in that sub-paragraph.

11. Where a decision of any authority is quashed under paragraph 9, that authority shall, as the case may require,—

- (a) issue, renew, transfer or restore the licence in question;
- (b) issue the licence in question free of any term, condition or restriction; or
- (c) withdraw the variation of, or vary, any term, condition or restriction on or subject to which the licence in question is held.

12. The quashing under paragraph 9 of the revocation of a licence shall not affect the previous operation of that revocation.

13. A referee acting under this Schedule may make orders as to the expenses incurred by the parties to the reference, and the parties by whom any such expenses (including any expenses incurred by the Department concerned under paragraph 4) shall be paid.

14. Any expenses awarded to the Department concerned under paragraph 13 shall be a debt recoverable summarily by the Department concerned.

SCHEDULE 5

Article 51.

THE FACTORIES ACT (NORTHERN IRELAND) 1965 (C. 20)

PART I

AMENDMENTS OF PROVISIONS REFERRING TO APPOINTED FACTORY DOCTOR

1. In section 80 (3) (notification by factory occupier to the chief inspector, and the appointed factory doctor of cases of industrial diseases occurring in the factory) for the words "the appointed factory doctor" there shall be substituted the words "the employment medical adviser in charge of the area in which the factory is situate".

2. In section 117 (power of factory inspector to require cessation of employment of a young person in the absence of a certificate of an appointed factory doctor that he is fit) after the words "the appointed factory doctor" there shall be inserted the words "or an employment medical adviser".

3. In section 138 (1) (posting of abstract of Act and notices at a factory's principal entrances) for paragraph (c), there shall be substituted the following paragraph:—

"(c) a notice of the address of the employment medical adviser in charge of the area in which the factory is situate".

4. In section 141 (registers and records kept in pursuance of the Act to be preserved and kept available for inspection by a factory inspector or the appointed factory doctor) for the words "the appointed factory doctor" there shall be substituted the words "an employment medical adviser".

PART II

OTHER AMENDMENTS

5. After section 10 there shall be added the following section:—

"Medical examinations of persons employed in factories.

10A.—(1) If an employment medical adviser is of opinion that there ought, on grounds mentioned in subsection (2), to be a medical examination of a person or persons employed in a factory, he may serve on the occupier of the factory a written notice stating that he is of that opinion and requiring that the occupier shall permit a medical examination in accordance with this section of the person or persons in question, and the examination shall be permitted accordingly.

(2) The grounds on which a medical examination of a person may be required by an employment medical adviser's notice under subsection (1) are that (in the adviser's opinion) the person's health has been or is being injured, or it is possible that it has been, is being or will be injured, by reason of the nature of the work he is or has been called upon to do or may (to the adviser's knowledge) be called upon to do; and a notice under that subsection may be given with respect to one or more named persons or to persons of a class or description specified in the notice.

(3) A notice under subsection (1) shall name the place where the medical examination is to be conducted and, if it is a place other than the factory, the day on which and the time at which it is to be begun; and

(a) every person to whom the notice relates shall be informed, as soon as practicable after service thereof, of the contents thereof and of the fact that he is free to attend for the purpose of submitting to the examination; and

(b) if the notice states that the examination is to be conducted at the factory, suitable accommodation thereat shall be provided for the conduct of the examination.

(4) A medical examination conducted in pursuance of a notice under subsection (1) shall be begun within seven days after the day on which the notice is served and shall be conducted by, or in accordance with arrangements made by, an employment medical adviser, and take place at a reasonable time during working hours.

(5) An employment medical adviser may, by written notice served on the occupier of a factory, cancel a notice served on the occupier under subsection (1); and a notice which relates to two or more named persons may be cancelled either in relation to them all or in relation to any one or more of them.

(6) In this section, 'medical examination' includes pathological, physiological and radiological tests and similar investigations."

6. For section 74 (2) there shall be substituted the following subsection:—

"(2) If, in the case of a woman or young person who is employed in a factory in a process involving the use of lead compounds, an employment medical adviser serves on the occupier of the factory a written notice stating that, in the opinion of the adviser, the continued employment of that woman or young person in that process would involve special danger to her or his health, it shall not be lawful for that woman or young person to be employed in any such process in that factory, unless the notice has been cancelled by a further written notice served on the occupier by an employment medical adviser."

7. After section 117 there shall be added the following section:—

"Duty of factory occupier to give notice of employment of a young person.

117A.—(1) Subject to subsection (2), where the occupier of a factory takes a young person into his employment to work in the factory (or transfers to work in the factory from work elsewhere than in a factory a young person already in his employment), the occupier shall, not later than seven days after the day on which he does so, send to the local employment service office of the Department of Manpower Services a written notice stating the name of the occupier, the address of the factory and the fact of the young person's having been so taken or transferred, and the date on which, and the work to do which, he was so taken or transferred, and giving such of the following information as is within the occupier's knowledge, namely:—

- (a) the young person's Christian name (or forename) and surname;
- (b) the date of his birth;
- (c) his usual residential address; and
- (d) the name and address of the school (if any) which he last attended before he was so taken or transferred.

(2) In a case where this section applies by virtue of its inclusion in section 123 (3), 124 (2) or 125 (2), a notice under subsection (1) shall state as the address of the factory the place where the young person works.

(3) In this section—

- (a) 'the local employment service office' means the local employment service office maintained by the Department of Manpower Services for the area in which the factory is situated; and
- (b) 'school' means a school within the meaning of the Education and Libraries (Northern Ireland) Order 1972 (a)."

8. In section 179 (3) after the words "of the chief inspector" there shall be added the words "or a person appointed by the Department of Manpower Services".

9. In section 123—

(a) S.I. 1972/1263 (N.I. 12).

(a) in subsection (2) after paragraph (a) there shall be added the following paragraph—

“(aa) the provisions of sections 10A and 117A;”;

(b) for subsection 3 (b) there shall be substituted the following paragraph—

“(b) the provisions of sections 10A and 117A;”.

10. In section 124 (2) after paragraph (a) there shall be inserted the following paragraph—

“(aa) the provisions of sections 10A and 117A;”.

11. In section 125 (2) after paragraph (a) there shall be inserted the following paragraph—

“(aa) the provisions of sections 10A and 117A;”.

PART III

TRANSITIONAL PROVISION

12. Where, at the commencement of this Schedule, a person's employment is unlawful under section 74 (2) of the Factories Act (Northern Ireland) 1965 (as originally enacted) or under that subsection as extended by section 126 of that Act, and is known to be so by the occupier of the factory or, if the employment is not in a factory, by the employer, then there shall be deemed to have been served on that occupier or employer immediately after that commencement by an employment medical adviser, under the subsection substituted for section 74 (2) by paragraph 6, a written notice stating that, in the opinion of the adviser, the continued employment of that person in that process would involve special danger to his health.

SCHEDULE 6

Article 56 (1).

AMENDMENTS

The Coroners Act (Northern Ireland) 1959 (c. 15)

1. In section 18 (1) (c) of the Coroners Act (Northern Ireland) 1959 (by virtue of which an inquest must be held with a jury in cases of death from certain causes of which notice is required to be given to any inspector or other officer of a government department), after the words “of a government department” insert the words “or to an inspector appointed under Article 21 of the Health and Safety at Work (Northern Ireland) Order 1978”.

The Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 (c. 19)

2. In section 4 of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965—

(a) in subsection (1A) for the words “subsection (1B)” substitute the words “subsections (1B) and (1C)”;

(b) after subsection (1B) insert the following subsection—

“(1C) The provisions of paragraphs (a) to (c) of subsection (1A) shall not apply to rules, disciplinary decisions, grievances or procedures relating to health or safety at work.”.

The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

3. In Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified under that Act) insert at the appropriate place in alphabetical order—

“The Health and Safety Agency for Northern Ireland”.

The Sex Discrimination (Northern Ireland) Order 1976

1976/1042 (N.I. 15)

4. In Schedule 4 to the Sex Discrimination (Northern Ireland) Order 1976 at the end insert—

“3. The provisions of Part II of the Health and Safety at Work (Northern Ireland) Order 1978 and of any health and safety regulations made under that Part.”.

The Industrial Relations (No. 2) (Northern Ireland) Order 1976

1976/2147 (N.I. 28)

5. In Article 9 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976—

(a) in paragraph (1) for the words “any requirement imposed by or under any statutory provision which is” substitute the words—

“(a) any requirement imposed by or under any statutory provision, or

(b) any recommendation in a provision of a code of practice issued or approved under Article 18 of the Health and Safety at Work (Northern Ireland) Order 1978,

which is a provision”;

(b) in paragraph (4) after the word “requirement” insert the words “or recommendation”.

Article 56 (2).

SCHEDULE 7

REPEALS

Chapter or Number	Short Title	Extent of repeal
1965 c. 20.	The Factories Act (Northern Ireland) 1965.	Sections 83, 99 (4), 116. In section 117 the words “(notwithstanding that a certificate under section 116 is in force in respect of him)”. Sections 124 (2) (g), 125 (2) (g), 146 (1) (g), 151, 152 and 181 (2).
S.I. 1977/1245 (N.I. 12).	The Agriculture (Miscellaneous Provisions) (Northern Ireland) Order 1977.	Article 14.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes provision for securing the health, safety and welfare of persons at work and for protecting others against risks to health or safety in connection with the activities of persons at work and establishes the Health and Safety Agency for Northern Ireland. The Order also establishes an employment medical advisory service and amends the Factories Act (Northern Ireland) 1965 in relation to medical arrangements.

STATUTORY INSTRUMENTS

1978 No. 1039 (N.I. 9)

NORTHERN IRELAND

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(Northern Ireland) Order 1978**

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