

# Legal Framework of Health and Safety at work in Northern Ireland



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

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at Work in Northern Ireland**

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## **INTRODUCTION**

The Health and Safety Executive for Northern Ireland (hereafter called “the Executive”) has produced this booklet as a brief introduction to the framework for control of health and safety in Northern Ireland.

It outlines the basis of the law (the Health and Safety at Work (Northern Ireland) Order 1978) and the legal responsibilities of employers, employees and others involved in the work situation.

It also describes how the law is enforced, as well as indicating sources of further information.

The leaflet is not intended to be an authoritative interpretation of the law, but rather aims to try to help people understand their responsibilities under the Health and Safety at Work (Northern Ireland) Order 1978.

## **BACKGROUND**

Prior to 1978, workplace or occupational health and safety legislation tended to come into force in a piecemeal fashion. Some legislation dealt with a particular group of workers and some dealt with a particular type of dangerous machine or work process or substance.

The result was a rather unwieldy mass of law which was confusing to industry, intricate in its detail and difficult to administer.

To address the problems a Committee under Lord Robens was set up in 1970. This reported in 1972 and its recommendations led eventually to the introduction in Great Britain of the Health and Safety at Work etc. Act 1974 which was mirrored in Northern Ireland by the Health and Safety at Work (Northern Ireland) Order 1978 (hereafter called “the Order”).

### **A Different Approach**

The Order is very different from previous legislation as it affords **all** people at work the right to have their health, safety and welfare protected. The Order also offers to people not at work protection from risks to their health and safety from work activities.

The Order places legal obligations (known as “duties”) on-

**employers;**

**employees;**

**the self-employed;**

**manufacturers, designers, importers and suppliers of articles and substances for use at work;**

**people in control of work (in certain non-domestic) premises.**

The Order places the prime responsibility for doing what is needed to prevent accidents and occupational ill health on those who create the risks.

## **PROVISIONS OF THE ORDER**

The main provisions of the Order are intended-

- (1) to secure the health, safety and welfare of persons at work, and
- (2) to protect persons other than those at work against risks to health and safety arising out of, or in connection with, the activities of persons at work.

These general provisions are in addition to the particular duties imposed in existing legislation (for example, the Factories Act (Northern Ireland) 1965 and the Offices and Shop Premises Act (Northern Ireland) 1966, which remain in operation until repealed).

### **Regulations**

Because the provisions are of a general nature, the Order provides for the making of Regulations. These may impose duties in respect of specific hazards or work processes or groups of workers.

Regulations may also modify or repeal other legislation.

### **Codes of Practice**

The Order provides for Approved Codes of Practice (ACoPs) to supplement Regulations.

ACoPs have a special legal status. If a person is prosecuted for breach of health and safety law and it is proved that he or she had not followed the relevant provisions of an ACoP, the Court will find that person at fault unless that person can show that he or she complied with the law in some other way.

### **Guidance Notes**

Following Guidance is not compulsory but a person who follows Guidance will normally be doing enough to comply with the law. Guidance may be referred to as illustrating good practice.

## **DUTIES IMPOSED BY THE ORDER**

The Order places legal duties on people concerned with work activity. In doing so, the phrase 'so far as is reasonably practicable' is frequently used. This allows a balance to be made between the cost of implementing safety precautions and the element of risk involved.

### **Specific Duties**

#### **DUTIES OF EMPLOYERS (Article 4)**

If you are an employer-

- (1) you must take measures to safeguard the health, safety and welfare of your employees. Whatever the work process, you must ensure it is carried out in a manner which is safe and which will not adversely affect the health of your employees, either now or in the future;
- (2) you must provide and maintain work systems which are safe and without risk to health. Plant and machinery must also be maintained to appropriate standards of safety. This involves planning the work processes, assessing the risks involved and putting in place measures to deal with the risks identified;
- (3) you must make provision for the safe use, handling, storage and transport of articles or substances used at work. This again requires planning and risk assessment with

regard to such things as the manual handling of heavy or awkward items or loads, and the handling and use of substances which are of a dangerous nature;

- (4) you must provide to employees information, instruction, training and supervision in order to ensure their health and safety at work. In effect, this means that a positive effort must be made to ensure that all employees are told of any likely risks arising from work processes or from materials they have to handle. Instruction and training must be provided along with an appropriate degree of supervision. It is not acceptable to presume that employees know or realise the risks;
- (5) as regards the workplace, you have a responsibility to ensure that it is maintained in a condition that is safe and without risk to health, and that all means of access and egress are similarly kept safe. Not only the physical layout of a workplace but the working conditions, such as lighting, heating, ventilation and cleanliness, must be considered. Where there is a recognised health hazard, for example, noxious fumes or asbestos dust, Regulations made under the Order require you to reduce the risk by appropriate means and to set up a system to monitor the health of those workers likely to be affected by the hazard.

#### **Charge to Employee (Article 10)**

You may not charge any employee in respect of anything done or provided to meet a requirement of health and safety legislation.

#### **Risk Assessment (Article 4)**

Basic to all these requirements is the need to assess the degree of risk in all work processes and to take appropriate action to deal with the risk identified.

#### **Safety Policy (Article 4)**

Employers with five or more employees must prepare a written statement of general policy on health and safety and bring this statement to the attention of all employees.

The policy statement should include details of the organisation and the arrangements for carrying out the policy.

It must be revised from time to time to take account of changes of circumstances and such revisions must be brought to the attention of employees.

#### **Duties to Others (Article 5)**

You must also have regard for the health and safety of other people who may be affected by your company's work activities. Depending on the nature of your business, the range of people may include:

- (1) contractors or sub-contractors working on your premises, or working on the same premises where you are working;
- (2) people on whose premises you are working as a contractor;
- (3) customers, clients;
- (4) users of leisure facilities, such as fairgrounds, and spectators;
- (5) people living, working or passing close to your premises, or where your work is carried out;

- (6) people working with you but not classed as employees, such as home workers and volunteer workers; and
- (7) pupils, students or trainees and others who may be on the premises for any length of time.

You should take account of children, elderly people and people with disabilities.

**If you can reasonably anticipate the possibility of injury or cause of ill health to any of these people you are obliged to make provision to prevent such injury or cause of ill health so far as is reasonably practicable.**

#### **DUTIES OF THE SELF-EMPLOYED (Article 5)**

If you are self-employed by law you must safeguard yourself from risks to your health and safety, and take precautions to safeguard other people who may be affected by your work activities.

**If you can reasonably anticipate the possibility of injury or cause of ill health to other people, you are obliged to make provision to prevent such injury so far as is reasonably practicable.**

If you employ others, then you are subject to the responsibilities affecting employers (please see above).

#### **Duties of Others to You**

While you have legal obligations to yourself and others, other people have obligations to you:

- (1) if you are working on other people's premises, you should be informed of any possible risk to yourself at these premises, for example, hazards such as dangerous chemicals or processes or areas which are unsafe to enter;
- (2) if you are working near other workers, they have an obligation to ensure that you are not put at risk by what they are doing.

#### **DUTIES OF EMPLOYEES (Articles 8+9)**

If you are an employee:

- (1) by law, you must take reasonable care for your own health and safety. You must also have regard for the health and safety of other people who may be affected by what you do or what you neglect to do;
- (2) you are obliged to co-operate with your employer, so far as is necessary, to make it possible for him or her to carry out his or her responsibilities as regards health and safety; and
- (3) you must not intentionally interfere with or misuse anything provided in the interests of health, safety and welfare (whether it be a guard on a machine, a fire alarm or fire extinguisher) or piece of equipment specially provided to make a job safer.

#### **Duties of Others to You**

You should be aware of the protection offered to you by health and safety legislation:

- (1) your employer is obliged to make adequate provision for your health, safety and welfare at work;

- (2) your employer must provide safe systems of work and safe plant and machinery;
- (3) you should receive adequate information and instruction or training to be able to carry out a job safely, and there should be an adequate degree of supervision;
- (4) safe systems of work include provision for safely handling and using dangerous substances, and moving heavy or awkward loads; and
- (5) where you are required to work there should be adequate standards of lighting, heating and ventilation and you should be able to work in a reasonable degree of comfort.

### **DUTIES OF DESIGNERS, MANUFACTURERS, IMPORTERS AND SUPPLIERS (Article 7)**

If you are a designer, manufacturer, importer or supplier of articles or substances for use at work-

- (1) you must ensure, so far as is reasonably practicable, that such articles or substances are safe when properly used;
- (2) you must either test articles or arrange for their testing to be done by a competent authority, to ensure that they can be used safely;
- (3) you must supply information about the use for which an article is designed and on the conditions for using the article safely;
- (4) if you erect or install any article for use at work you must ensure that nothing about the way in which the article is erected or installed makes it unsafe or a risk to health.

### **DUTIES OF PERSONS IN CONTROL OF PREMISES (Article 6)**

If you are in control of premises used by people who are not your employees:

- (1) you have a legal obligation to take such measures as is reasonable to ensure that the premises, including means of entry and exit, are safe and without risk to health; and
- (2) if you have control of any plant or substance in such premises you have a similar obligation regarding these.

### **ENFORCEMENT**

The Order imposes legal requirements and responsibility for the enforcement of these requirements rests with the Executive or District Councils. These areas of responsibility may from time to time be varied by Regulations, but in broad terms, they are:

- (1) for workplaces such as factories, building sites, mines and quarries and farms: the Executive; and
- (2) for workplaces such as offices, shops and restaurants: the District Council for the area.

While these authorities have a responsibility to enforce health and safety law, they play a role in the prevention of work-related accidents and ill health. Consequently they are willing to give advice and guidance to employers and other people involved in the work situation.

### **Powers of Inspectors**

Inspectors appointed by the enforcing authorities have a wide range of powers which they may exercise for the purpose of ensuring compliance with the provisions of health and safety legislation.



### **These powers include the right to:**

- enter any premises at any reasonable time, or, in a dangerous situation, at any time;
- carry out any examination or investigation as may be necessary;
- direct that premises be left undisturbed pending completion of an examination or investigation;
- take samples of any article or substance;
- cause any article to be dismantled or tested in pursuit of an investigation;
- take possession of any article or substance for as long as is necessary for an examination to be completed;
- require any person who it is believed can give relevant information to answer such questions as the inspector may think fit;
- require the production of, inspect and take copies of any books or documents which it is necessary for him or her to see for the purposes of any examination or investigation.

### **In addition an inspector has the power to:**

- issue a **prohibition notice**, if he or she is of the opinion that an activity being carried on, or likely to be carried on, involves risk of serious personal injury, to stop the activity giving rise to the risk until the remedial action specified in the notice has been taken;
- issue an **improvement notice** if he or she is of the opinion that a person is contravening a statutory health and safety provision, and it is likely that such contravention will continue or be repeated. Such a notice will specify a period of time within which remedial action must be taken;
- seize, render harmless or destroy any substance or article that he or she considers to be the cause of imminent danger of serious personal injury; and
- prosecute any person contravening health and safety legislation.

### **Appeals**

A person on whom a prohibition or improvement notice has been served may appeal against the notice, or any terms of it, to an Industrial Tribunal.

### **Penalties**

The maximum penalty, in a magistrate's court, which may be applied to **EACH OFFENCE** of a breach of the order is:

- **Articles 4, 5, 6, 7, 9** - a term of imprisonment not exceeding six months or a fine not exceeding £20,000, or both;
- **Article 8** - a term of imprisonment not exceeding six months or a fine not exceeding the statutory maximum (currently £5,000), or both;
- **Article 10** - a fine not exceeding £20,000.

- **Breach of an improvement or prohibition notice, or failure to comply with a court order** - a term of imprisonment not exceeding six months or a fine not exceeding £20,000, or both.

Penalties in respect of other breaches of the Order range from a maximum fine of £5,000 up to imprisonment for a term not exceeding six months, or a fine not exceeding £20,000, or both.

There is no limit to the fine on conviction in a higher court which can also impose a term of imprisonment for up to two years for certain offences.

### **Burden of Proof**

In the case of a prosecution under the Order, as in any criminal prosecution, the prosecutor must prove his or her case beyond any reasonable doubt. However, when the alleged offence consists of failure to do something “so far as is practicable” or “so far as is reasonably practicable” it is for the defendant to show that it was not practicable or reasonably practicable to do more than was in fact done to satisfy the duty or requirement.

### **EMPLOYMENT MEDICAL ADVISORY SERVICE**

HSENI’s Employment Medical Advisory Service (EMAS) is a statutory body established under the Health and Safety at Work Order (NI) 1978.

It provides medical advice both externally and internally on all aspects of health and work including workplace health risk management, statutory health surveillance, attendance management and rehabilitation, occupational health support and workplace health promotion.

EMAS supports HSENI in its statutory appointment of doctors, its appointment of Approved Medical Examiners of Divers and in its approval of first-aid at work training organisations. EMAS in its own right can also carry out statutory medical examinations.

### **THE HEALTH AND SAFETY EXECUTIVE FOR NORTHERN IRELAND**

The Executive was established on 1st April 1999 by the Health and Safety at Work (Amendment) (Northern Ireland) Order 1998 to replace the Health and Safety Agency for Northern Ireland which had existed since 1979.

It has a Chairman and a Board of six to nine Members appointed by the Public Appointment Unit.

The Executive’s vision is:

“To achieve world-class performance in workplace health and safety and therefore improve the overall economic and social well-being of our community.”.

The Executive is a public watchdog. In addition to its role in enforcing health and safety legislation, it seeks to-

- (1) **secure** the health, safety and welfare of people at work, and
- (2) **protect** all other people against risks to their health and safety from work-related activities.

**It promotes health, safety and welfare at work.**

The Executive organises conferences, seminars and other events. Every opportunity is taken to increase awareness of the need to have a healthy and safe workplace.

**It provides an extensive free information and advice service.**

This service is available to employees, students and in fact anyone with a query about workplace health and safety.

**The service includes an Information and Advice Centre at its headquarters (see below) at which it maintains-**

- information on all current Regulations, Approved Codes of Practice and Guidance Notes;
- a wide range of leaflets on particular health and safety aspects;
- a free DVD/video lending service; and

The Executive also makes health and safety information available to the public through PCs sited around Northern Ireland.

In addition, the Executive's service includes:

- **proposing Regulations and monitoring existing Regulations and enforcing policies.** The Executive seeks to ensure that all Regulations are appropriate and reasonable, that the interests of employers, employees and the public at large are taken into account;
- carrying out and encouraging others to carry out research. The Executive believes that relevant research is invaluable in helping shape future policy on health and safety at work;
- encouraging the provision of training in health and safety. The Executive is of the opinion that good quality training of key personnel within companies will raise awareness, through effective risk assessment, of the need to take preventative action.

## **FURTHER INFORMATION**

Further advice on the provisions of the Order can be obtained from:

### **THE HEALTH AND SAFETY EXECUTIVE FOR NORTHERN IRELAND**

83 Ladas Drive

BELFAST

BT6 9FR

Telephone: (028) 9024 3249

Fax: (028) 9023 5383

Textphone: (028) 9054 6896

E-mail: [hzeni@detini.gov.uk](mailto:hzeni@detini.gov.uk)

or the Environmental Health Department of your local district council;

or visit the Executive's website at: [www.hzeni.gov.uk](http://www.hzeni.gov.uk)

## **USEFUL PUBLICATIONS**

### **The Guide to Workplace Health and Safety**

(A comprehensive introduction to the requirements for health and safety in all types of workplace)

Obtainable free of charge from the Executive.

### **EMAS (Employment Medical Advisory Service) leaflet**

Obtainable free of charge from the Executive or from:

#### **Employment Medical Advisory Service**

Avenue House

42-44 Rosemary Street

BELFAST

BT1 1QE

Telephone: (028) 9040 8004

Fax: (028) 9040 8006

email: [emasmail@detini.gov.uk](mailto:emasmail@detini.gov.uk)



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