STATUTORY RULES OF NORTHERN IRELAND

1999 No. 13

HEALTH AND SAFETY

Confined Spaces Regulations (Northern Ireland) 1999

Made - - - - 14th January 1999

Coming into operation 1st June 1999

The Department of Economic Development, being the Department concerned(**1**), in exercise of the powers conferred on it by Articles 17(1), (2), (3), (5) and (6) and 55(2) of, and paragraphs 1(1) and (2), 8, 10 and 17(a) of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978(**2**) and of every other power enabling it in that behalf, after consultation in accordance with Article 46(1) of that Order with the Health and Safety Agency for Northern Ireland and such other bodies as appeared to the Department to be appropriate, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Confined Spaces Regulations (Northern Ireland) 1999 and shall come into operation on 1st June 1999.

(2) In these Regulations—

"confined space" means any place, including any chamber, tank, vat, silo, pit, trench, pipe, sewer, flue, well or other similar space in which, by virtue of its enclosed nature, there arises a reasonably foreseeable specified risk;

"diving operation" has the same meaning assigned thereto by regulation 2(1) of the Diving Operations at Work Regulations (Northern Ireland) 1994(**3**);

"free flowing solid" means any substance consisting of solid particles and which is of, or is capable of being in, a flowing or running consistency, and includes flour, grain, sugar, sand or other similar material;

"mine" has the same meaning as in the Mines Act (Northern Ireland) 1969(**4**);

"specified risk" means a risk of—

(a) serious injury to any person at work arising from a fire or explosion;

(b) without prejudice to paragraph (a)—

(**1**) *See* Article 2(2) of S.I. 1978/1039 (N.I. 9)
(**2**) S.I. 1978/1039 (N.I. 9)
(**3**) S.R. 1994 No. 146
(**4**) 1969 c. 6 (N.I.)

(i) the loss of consciousness of any person at work arising from an increase in body temperature;

(ii) the loss of consciousness or asphyxiation of any person at work arising from gas, fume, vapour or the lack of oxygen;

(c) the drowning of any person at work arising from an increase in the level of a liquid; or

(d) the asphyxiation of any person at work arising from a free flowing solid or the inability to reach a respirable environment due to entrapment by a free flowing solid;

"system of work" includes the provision of equipment which is in good working order.

"territorial waters" means United Kingdom territorial waters adjacent to Northern Ireland and "within territorial waters" includes on, over and under them.

Disapplication of Regulations

2. These Regulations shall not apply to or in relation to—

(a) the master or crew of a sea-going ship or to the employer of such persons in respect of the normal ship-board activities carried out solely by a ship's crew under the direction of the master;

(b) any place below ground in a mine; or

(c) any diving operation to and in relation to which the Diving Operations at Work Regulations (Northern Ireland) 1994 apply by virtue of regulation 3 of those Regulations.

Duties

3.—(1) Every employer shall—

(a) ensure compliance with the provisions of these Regulations in respect of any work carried out by his employees; and

(b) ensure compliance, so far as is reasonably practicable, with the provisions of these Regulations in respect of any work carried out by persons other than his employees insofar as the provisions relate to matters which are within his control.

(2) Every self-employed person shall—

(a) comply with the provisions of these Regulations in respect of his own work; and

(b) ensure compliance, so far as is reasonably practicable, with the provisions of these Regulations in respect of any work carried out by other persons insofar as the provisions relate to matters which are within his control.

Work in confined spaces

4.—(1) A person at work shall not enter a confined space to carry out work for any purpose unless it is not reasonably practicable to achieve that purpose without such entry.

(2) Without prejudice to paragraph (1), so far as is reasonably practicable, a person at work shall not enter or carry out any work in, or (other than as a result of an emergency) leave, a confined space otherwise than in accordance with a system of work which, in relation to any relevant specified risks, renders that work safe and without risks to health.

Emergency arrangements

5.—(1) Without prejudice to regulation 4, a person at work shall not enter or carry out work in a confined space unless there have been prepared in respect of that confined space suitable and

sufficient arrangements for the rescue of persons in the event of an emergency, whether or not arising out of a specified risk.

(2) Without prejudice to the generality of paragraph (1), the arrangements referred to in that paragraph shall not be suitable and sufficient unless—

(a) they reduce, so far as is reasonably practicable, the risks to the health and safety of any person required to put the arrangements for rescue into operation; and

(b) they require, where the need for resuscitation of any person is a likely consequence of a relevant specified risk, the provision and maintenance of such equipment as is necessary to enable resuscitation procedures to be carried out.

(3) Whenever there arises any circumstance to which the arrangements referred to in paragraph (1) relate, those arrangements, or the relevant part of those arrangements, shall immediately be put into operation.

Exemption certificates

6.—(1) Subject to paragraph (2), the Department may, by a certificate in writing, exempt—

(a) any person or class of persons; or

(b) any type or class of confined space,

from the application of any of the requirements or prohibitions imposed by these Regulations, and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by the Department by a further certificate in writing.

(2) The Department shall not grant any such exemption unless, having regard to the circumstances of the case, and in particular to—

(a) the conditions, if any, which it proposes to attach to the exemption; and

(b) any other requirements imposed by or under any statutory provisions which apply to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it.

Defence in proceedings

7.—(1) In any proceedings for an offence for a contravention of regulation 5(3) it shall be a defence for the person charged to prove—

(a) that the contravention was due to the act or default of another person not being one of his employees (hereinafter called "the other person"); and

(b) that he took all reasonable precautions and exercised all due diligence to avoid the contravention.

(2) The person charged shall not, without leave of the court, be entitled to rely on the defence referred to in paragraph (1) unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

(3) Where a contravention of the provision referred to in paragraph (1) by any person is due to the act or default of some other person, that other person shall be guilty of the offence which would, but for any defence under this regulation available to the first-mentioned person, be constituted by the act or default.

Application to territorial waters

8. Subject to regulation 2, these Regulations shall apply within territorial waters only to and in relation to the activities to which paragraph 2 of Schedule 1 applies.

Repeal and revocations

9.—(1) Section 31 of the Factories Act (Northern Ireland) 1965(**5**) is hereby repealed.

(2) The instruments set out in column 1 of Schedule 2 are revoked to the extent shown in column 3 of that Schedule.

Sealed with the Official Seal of the Department of Economic Development on

L.S.

R. G. F. Fry
14th January 1999. Assistant Secretary

(**5**) 1965 c. 20 (N.I.); section 31 was amended by S.R. 1984 No. 283 and S.R. 1993 No. 20