STATUTORY INSTRUMENTS

1981 No. 158 (N.I. 4)

Clean Air (Northern Ireland) Order 1981

- - - - - - *10th February 1981*

Introductory

Title and commencement

1.—(1) This Order may be cited as the Clean Air (Northern Ireland) Order 1981.

(2) *Commencement*

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 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—

[[F1]"authorised fuel" means a fuel that is included on a list of authorised fuels kept by the Department under Article 17(3A);**]**

"chimney" includes structures and openings of any kind from or through which smoke, grit, dust or fumes may be emitted, and in particular, includes flues, and references to a chimney of a building include references to a chimney which serves the whole or part of a building but is structurally separate from it;

"conditional sale agreeement" 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;

"the Department" means the Department of the Environment;

"day" means a period of twenty-four hours beginning at midnight;

"fireplace" includes any furnace, grate or stove, whether open or closed;

"fumes" means any airborne solid matter smaller than dust;

"gaseous emissions" includes gases and fumes containing sulphur or any compound of sulphur;

"grit and dust" includes solid particles of any kind;

"heating" in relation to a dwelling includes the heating of water;

"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 specified event;

"industrial plant" includes any still, melting pot or other plant used for any industrial or trade purposes, and also any incinerator used for or in connection with any such purposes;

"owner" has the same meaning as in the Public Health (Ireland) Act 1878 ;

"practicable" means reasonably practicable having regard, amongst other things, to local conditions and circumstances, to the financial implications and to the current state of technical knowledge, and "practicable means" includes the provision and maintenance of plant and the proper use of it;

"prejudicial to health" means injurious, or likely to cause injury, to health;

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Department;

"smoke" includes soot, ash, grit and gritty particles emitted in smoke.

(3) In this Order "dark smoke" means smoke which, if compared in the appropriate manner with a chart of the type known on the 9th June 1964 as the Ringelmann Chart, would appear to be as dark as or darker than shade 2 on that chart; but—

(a) in proceedings brought under Article 3, 4 or 23, the court may be satisfied that smoke is or is not dark smoke as so defined notwithstanding that there has been no actual comparison of the smoke with a chart of that type; and

(b) in particular, and without prejudice to the generality of the preceding provisions of this paragraph, if any method is prescribed for ascertaining whether smoke is dark smoke as so defined, proof in any such proceedings that that method was properly applied, and that the smoke was ascertained by that method to be or not to be dark smoke as so defined, shall be accepted as sufficient.

(4) Any reference in this Order to the occupier of a building shall, in relation to any building different parts of which are occupied by different persons, be construed as a reference to the occupier or other person in control of the part of the building in which the relevant fireplace is situated.

(5) In this Order, "private dwelling" means any building or part of a building used or intended to be used as such, and a building or part of a building shall not be deemed for the purposes of this Order to be used or intended to be used otherwise than as a private dwelling by reason that a person who resides or is to reside in it is or is to be required or permitted to reside in it in consequence of his employment or of holding an office; and "dwelling" shall be construed accordingly.

(6) In this Order "new dwelling" means a dwelling which either—

(a) was erected after the 9th June 1964; or

(b) was produced by conversion, after the 9th June 1964, of other premises, with or without the addition of premises erected after that date;

and for the purposes of this paragraph, a dwelling or premises shall not be treated as erected or converted after the 9th June 1964 unless the erection or conversion was begun after that date.

(7) Any furnaces which are in the occupation of the same person and served by a single chimney shall, for the purposes of Articles[F2] 7 to 12 and 15 be taken to be one furnace.

(8) For the purposes of section 42(2) of the Northern Ireland Constitution Act 1973 (validity of Acts of the Parliament of Northern Ireland), provisions of this Order which re-enact provisions of an Act of the Parliament of Northern Ireland shall be deemed to be provisions of such an Act.

F1 Words in art. 2(2) substituted (10.10.2016) by Environmental Better Regulation Act (NorthernIreland) 2016 (c. 13), **ss. 15(1)**, 27(2); S.R. 2016/332, art. 2

F2 prosp. rep. by 1997 NI 18

Dark smoke

Prohibition of dark smoke from chimneys

3.—(1) Subject to the provisions of this Order, dark smoke shall not be emitted from a chimney of any building, and if, on any day, dark smoke is so emitted, the occupier of the building shall be guilty of an offence.

(2) Emissions of smoke from any chimney lasting for not longer than such periods as may be prescribed shall, in such classes of case and subject to such limitations as may be prescribed, be left out of account for the purposes of this Article.

(3) In any proceedings for an offence under this Article, it shall be a defence to prove—

(a) that the contravention complained of was solely due to the lighting up of a furnace which was cold and that all practicable steps had been taken to prevent or minimise the emission of dark smoke; or

(b) that the contravention complained of was solely due to some failure of a furnace or of apparatus used in connection with a furnace and that—

(i) that failure could not reasonably have been foreseen, or, if foreseen, could not reasonably have been provided against; and

(ii) the contravention could not reasonably have been prevented by action taken after the failure occurred; or

(c) that the contravention complained of was solely due to the use of unsuitable fuel and that—

(i) suitable fuel was unobtainable; and

(ii) the least unsuitable fuel which was available was used; and

(iii) all practicable steps had been taken to prevent or minimise the emission of dark smoke as a result of the use of that fuel; or

(d) that the contravention complained of was due to a combination of two or more of the causes specified in sub-paragraphs (*a*) to (*c*) and that the other conditions specified in those sub-paragraphs are satisfied in relation to those causes respectively.

(4) Subject to paragraph (5), this Article shall apply in relation to a chimney serving the furnace of any boiler or industrial plant (being a boiler or plant attached to a building or for the time being fixed to or installed on any land) as it applies in relation to a chimney of a building.

(5) In relation to any chimney of the kind referred to in paragraph (4) which is not a chimney of a building, the reference in this Article to the occupier of the building shall be construed as a reference to the person having possession of the boiler or plant.

Prohibition of dark smoke from industrial or trade premises

4.—(1) Subject to the following provisions of this Article, dark smoke shall not be emitted from any industrial or trade premises and if, on any day, dark smoke is so emitted the occupier of the premises shall be guilty of an offence.

(2) Paragraph (1) shall not apply to the emission of dark smoke from a chimney of a building or from any other chimney to which Article 3 applies.

(3) The Department may by regulations exempt from paragraph (1), subject to compliance with such conditions, if any, as may be prescribed, the emission of dark smoke caused by the burning of any prescribed matter.

(4) In proceedings for an offence under this Article it shall be a defence to prove that the contravention complained of was inadvertent and that all practicable steps had been taken to prevent or minimise the emission of dark smoke.

(5) In this Article "industrial or trade premises" means premises used for any industrial or trade purposes or premises not so used on which matter is burnt in connection with any industrial or trade process.

Smoke from furnaces

Certain furnaces to be so far as practicable smokeless

5.—(1) Subject to the provisions of this Article, a furnace shall not be installed in—

(a) a building; or

(b) any boiler or industrial plant attached to a building or for the time being fixed to or installed on any land;

unless that furnace is so far as practicable capable of being operated continuously without emitting smoke when burning fuel of a type for which the furnace was designed.

(2) This Article shall not apply to a furnace the installation of which has been begun, or an agreement for the purchase or installation of which has been entered into before 1st July 1965.

(3) Any furnace installed in accordance with plans and specifications submitted to, and approved for the purposes of this Article by, a district council shall be deemed to comply with the provisions of paragraph (1).

(4) A furnace, other than a furnace to which paragraph (6) applies, shall not be installed in a building or in any such boiler or plant as is referred to in paragraph (1)(*b*) unless notice of the proposal to install the furnace has been given to the district council.

(5) After such date as may be prescribed, a furnace of such kind as may be prescribed shall not be installed in a building or in any such boiler or plant as is referred to in paragraph (1)(*b*) unless plans and specifications of the furnace have been submitted to the district council for its approval for the purposes of this Article.

(6) Where plans and specifications are submitted to the district council for its approval for the purposes of this Article (whether or not they are required to be submitted pursuant to paragraph (5)), the furnace to which the plans and specifications relate shall not be installed in a building or in any such boiler or plant as is referred to in paragraph (1)(*b*) except in accordance with the plans and specifications so approved.

(7) The provisions of Schedule 1 shall, subject to paragraph (8), apply in relation to an application for approval by the district council of any plans and specifications submitted to that council for the purposes of this Article.

(8) The district council shall not grant any application for approval under this Article if the furnace to which the application relates is not so far as practicable capable of being operated continuously without emitting smoke when burning fuel of a type for which the furnace was designed.

(9) A person—

(a) who installs a furnace in contravention of paragraph (4), (5) or (6); or

(b) on whose instructions a furnace is installed in contravention of any of those paragraphs;

shall be guilty of an offence.

(10) A person—

(a) who installs a furnace in contravention of paragraph (1); or

(b) on whose instructions a furnace is so installed;

shall, unless the furnace is one to which paragraph (6) applies, be guilty of an offence.

(11) This Article shall not apply to furnaces designed solely or mainly for use for domestic purposes, not being furnaces of boilers with a maximum heating capacity of**[**F3 16.12 kilowatts**]** per hour.

(12) This Article shall apply in relation to—

(a) the attachment to a building of a boiler or industrial plant which already contains a furnace;

(b) the fixing to or installation on any land of any boiler or industrial plant which already contains a furnace;

as it applies in relation to the installation of a furnace in any boiler or industrial plant of the kind mentioned in paragraph (1)(*b*).

(13) This Article shall apply in relation to such works of reconstruction of any furnace as may be prescribed as it applies in relation to the installation of any furnace.

F3 SR 1994/192

Art. 6 rep. by 1985 NI 15

Grit and dust from furnaces

Grit and dust from furnaces

7 F4**.**—(1) The Department may by regulations prescribe limits on the rates of emission of grit and dust from the chimneys of furnaces to which this Article applies.

(2) If on any day grit or dust is emitted from a chimney serving a furnace to which this Article applies at a rate exceeding the relevant limit prescribed under paragraph (1), the occupier of any building in which the furnace is situated shall be guilty of an offence.

(3) In proceedings for an offence under paragraph (2) it shall be a defence to prove that the best practicable means had been used for minimising the alleged emission.

(4) If, in the case of a building containing a furnace to which this Article applies and which is served by a chimney to which there is no limit applicable under paragraph (1), the occupier fails to use any practicable means there may be for minimising the emission of grit or dust from the chimney, he shall be guilty of an offence.

(5) This Article applies to any furnace in which solid, liquid or gaseous matter is burnt, not being a furnace designed solely or mainly for domestic purposes and used for heating a boiler with maximum heating capacity of less than**[**F5 16.12 kilowatts**]** per hour.

F4 prosp. rep. by 1997 NI 18
F5 SR 1994/192

New furnaces to be fitted with plant to arrest grit and dust

8 F6**.**—(1) Subject to Article 9, this Article applies to a furnace of such kind as may be prescribed used to burn fuel or solid waste.