

THE SMOKING (NORTHERN IRELAND) ORDER 2006

2006 No. 2957 (N.I. 20)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Smoking (Northern Ireland) Order 2006 (“the Order”) was made on 14th November 2006.
2. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety (“the Department”) in order to assist the reader in understanding the Order. It does not form part of the Order.

BACKGROUND AND POLICY OBJECTIVES

3. The policy objective is to protect employees and the general public from exposure to second-hand smoke. The Order makes provision for enclosed workplaces and public places to be smoke-free. The Order will also give the Department the power to make regulations in a number of areas including specifying premises or specified areas within them that do not have to be smoke-free. It is intended that these will include premises where a person has his home or is living either permanently or temporarily.

CONSULTATION

4. In December 2004 the Department published its regional strategy ‘*A Healthier Future – A Twenty Year Vision for Health and Wellbeing in Northern Ireland 2005 – 2025*’. The Strategy document sought views on three options for strengthening controls on the use of tobacco. In summary these were:-
 - i. to build on the existing policy of encouraging and supporting those who choose to give up smoking;
 - ii. to follow the English proposals which were to prohibit smoking in most public places and workplaces while still allowing smoking in some pubs and bars (those that did not serve food) and to allow private clubs to take the views of their members before exercising their discretion; and
 - iii. to adopt the approach taken in the Republic of Ireland and Scotland to ban smoking in all enclosed public places and workplaces.
5. There was overwhelming support for option iii.
6. There was a major public consultation on the draft Order and this elicited widespread support for comprehensive smoke-free legislation.

MAIN ELEMENTS OF THE ORDER

7. The Order contains 17 Articles and two Schedules. The key areas are: smoke-free premises, no-smoking signs, offences relating to smoking, enforcement and the sale of tobacco, etc. to young persons.

COMMENTARY ON ARTICLES

8. Comments on individual Articles follow as appropriate. Comments are not given where wording is self-explanatory.

Article 3: Smoke-free premises

Article 3 makes provision for enclosed or substantially enclosed premises to be smoke-free. *Paragraph (1)* provides for all premises to which the public has access to be smoke-free unless specifically exempted by regulations under Article 4. However, private premises, for example, stately homes which are open to the public for one day a year and are not a person's workplace, will only need to be smoke-free for the period when the public may be present.

Paragraph (2) sets out that premises used as a place of work by more than one person, irrespective of whether they work there at the same time, and premises where members of the public go to give or receive goods or a service, including for example a solicitor's office or a dressmaker's shop, will be smoke-free at all times.

Paragraph (3) covers premises that are, for example, someone's home as well as their workplace. When members of the public come to them to give or receive goods or a service, only the parts of the premises, which are used for work purposes, will be smoke-free. Those parts might include the waiting room and the area in which they receive the service.

Paragraph (5) provides for the Department to specify in regulations what enclosed and substantially enclosed mean. *Paragraph (7)* provides that premises are open to the public if a section of the public has access to them. It includes premises to which the public has free access and premises to which a section of the public has access on the payment of a fee.

Article 4: Exemptions

Article 4 provides for the Department to make regulations to exempt certain premises or parts of premises under certain conditions from the requirements of Article 3. However, Article 4 (3) specifically precludes exemptions in respect of licensed premises.

Article 5: Additional smoke-free places

This Article gives the Department the power to designate other places (which need not be enclosed or substantially enclosed) as smoke-free. They will be places/areas where the Department considers there is a risk of harm from second-hand smoke due to, for example, the inevitable close grouping of people. Examples might be sports stadia and other outdoor areas such as bus shelters.

Article 6: Vehicles

This Article enables the Department to make regulations to provide for vehicles to be smoke-free.

Article 7: No-smoking signs

This Article creates a duty to display no-smoking signs and sets out whose duty it is as well as the signage requirements, the offence provision and the defences that may apply. A person found guilty under this Article will be liable to a fine not exceeding level 3 on the standard scale.

Article 8: Offence of smoking in smoke-free place

This Article sets out the offence of smoking in a smoke-free place and the defence that may apply. A person found guilty under this Article will be liable to a fine not exceeding level 3 on the standard scale.

Article 9: Offence of failing to prevent smoking in smoke-free place

This Article sets out the offence of failing to prevent smoking in a smoke-free place along with those to whom it applies and the defences that may apply. A person found guilty of an offence under this Article will be liable to a fine not exceeding level 4 on the standard scale.

Article 10: Fixed penalties for offences under Articles 7 and 8

This Article provides for an authorised officer of a district council to issue a fixed penalty notice where he believes that an offence has been committed under Article 7(5) or 8(2). If the person pays the fixed penalty he will not be prosecuted for an offence. Schedule 1 sets out the fixed penalty provisions.

Article 14: Sale of tobacco, etc. to young persons

This Article gives the Department power to make regulations to change the age (but not lower than 16 years) of young persons to whom tobacco may be sold.

COMMENCEMENT

9. It is intended that controls on smoking in enclosed public places and workplaces will be introduced on 30th April 2007.