

2006 No. 2957 (N.I.20)

NORTHERN IRELAND

The Smoking (Northern Ireland) Order 2006

Made - - - - *14th November 2006*

Coming into operation in accordance with Article 1(2) and (3)

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At the Court at Buckingham Palace, the 14th day of November 2006

Present,

The Queen's Most Excellent Majesty in Council

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

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c.1) 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:—

Introductory

Title and commencement

1.—(1) This Order may be cited as the Smoking (Northern Ireland) Order 2006.

(2) Except as provided by paragraph (3), this Order comes into operation on such day or days as the Department may by order appoint.

(3) The following provisions come into operation two months after the date on which this Order is made—

- (a) this Article;
- (b) Article 2;
- (c) Article 3(5);
- (d) Articles 4 to 6;
- (e) Article 7, so far as it authorises the making of regulations;
- (f) Article 9(2);
- (g) Article 11(3);
- (h) Articles 14 to 16;
- (i) paragraphs 4, 5, 8 and 17 of Schedule 1 (and Article 10(3) so far as relating to those paragraphs).

Interpretation

2.—(1) Subject to Article 13(1), the Interpretation Act (Northern Ireland) 1954 (c.33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

- (a) “smoking” refers to smoking tobacco or anything which contains tobacco, or smoking any other substance; and

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(b) smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked.

(3) In this Order—

“authorised officer” has the meaning given by Article 11(2);

“the Department” means the Department of Health, Social Services and Public Safety;

“premises” includes—

(a) any building;

(b) any structure or installation (whether movable or not); and

(c) any tent;

“regulations” means regulations made by the Department;

“smoke” and other related expressions are to be read in accordance with paragraph (2);

“specified”, in relation to regulations, means specified in the regulations;

“vehicle” includes any type of vehicle, train, vessel or other means of transport, except—

(a) an aircraft; and

(b) any ship or hovercraft in relation to which regulations could be made under section 85 of the Merchant Shipping Act 1995 (c. 21) (safety and health on ships), including that section as applied by any Order in Council under section 1(1)(h) of the Hovercraft Act 1968 (c. 59);

“work” includes voluntary work.

(4) The district of a district council which is bounded by or to seaward of the high-water mark of mean tides shall also include, for the purposes of this Order, the territorial waters of the United Kingdom which are outside that district adjacent to any place where that high-water mark is within or on the boundary of that district.

Smoke-free premises, etc

Smoke-free premises

3.—(1) Premises are smoke-free if they are open to the public; but unless the premises also fall within paragraph (2), they are smoke-free only when open to the public.

(2) Premises are smoke-free if they are used as a place of work—

(a) by more than one person (even if the persons who work there do so at different times, or only intermittently), or

(b) where members of the public might attend for the purpose of seeking or receiving goods or services from the person or persons working there (even if members of the public are not always present).

They are smoke-free all the time.

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(3) If only part of the premises is open to the public or (as the case may be) used as a place of work mentioned in paragraph (2), the premises are smoke-free only to that extent.

(4) In any case, premises are smoke-free only in those areas which are enclosed or substantially enclosed.

(5) Regulations may specify what “enclosed” and “substantially enclosed” mean.

(6) Article 4 provides for some premises, or areas of premises, not to be smoke-free despite this Article.

(7) Premises are “open to the public” if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not.

Exemptions

4.—(1) The Department may make regulations providing for specified descriptions of premises, or specified areas within specified descriptions of premises, not to be smoke-free despite Article 3.

(2) In particular, regulations under paragraph (1) may specify premises where a person has his home, or is living whether permanently or temporarily.

(3) The power to make regulations under paragraph (1) is not exercisable so as to specify any description of—

- (a) premises in respect of which a licence (including an occasional licence) under the Licensing (Northern Ireland) Order 1996 (NI 22) is in force;
- (b) premises of a club registered under the Registration of Clubs (Northern Ireland) Order 1996 (NI 23).

(4) But paragraph (3) does not prevent the exercise of that power so as to specify any area, within a specified description of premises mentioned in paragraph (3), where a person has his home, or is living whether permanently or temporarily.

(5) The regulations may provide, in relation to any description of premises or areas of premises specified in the regulations, that the premises or areas are not smoke-free—

- (a) in specified circumstances,
- (b) at specified times,
- (c) if specified conditions are satisfied,

or any combination of those.

(6) The conditions may include conditions requiring the designation in accordance with the regulations, by the person in charge of any premises, of any rooms in which smoking is to be permitted.

Additional smoke-free places

5.—(1) The Department may make regulations designating as smoke-free any place or description of place that is not smoke-free under Article 3.

(2) The place, or places falling within the description, need not be enclosed or substantially enclosed.

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(3) The Department may designate a place or description of place under this Article only if satisfied that, without the designation, persons present there would be likely to be exposed to smoke.

(4) The regulations may provide for such places, or places falling within the description, to be smoke-free only—

- (a) in specified circumstances,
- (b) at specified times,
- (c) if specified conditions are satisfied,
- (d) in specified areas,

or any combination of those.

Vehicles

6.—(1) The Department may make regulations providing for vehicles to be smoke-free.

(2) The regulations may in particular make provision—

- (a) for the descriptions of vehicle which are to be smoke-free,
- (b) for the circumstances in which they are to be smoke-free,
- (c) for them to be smoke-free only in specified areas, or except in specified areas,
- (d) for exemptions.

No-smoking signs

No-smoking signs

7.—(1) It is the duty of any person who occupies or is concerned in the management of smoke-free premises to make sure that no-smoking signs complying with the requirements of this Article are displayed in those premises in accordance with the requirements of this Article.

(2) Regulations may provide for a duty corresponding to that mentioned in paragraph (1) to be imposed on specified persons or descriptions of person in relation to—

- (a) places which are smoke-free by virtue of Article 5,
- (b) vehicles which are smoke-free by virtue of Article 6.

(3) The signs must be displayed in accordance with any requirements contained in regulations.

(4) The signs must conform to any requirements specified in regulations (for example, requirements as to content, size, design, colour, or wording).

(5) A person who fails to comply with the duty in paragraph (1), or any corresponding duty in regulations under paragraph (2), commits an offence.

(6) It is a defence for a person charged with an offence under paragraph (5) to show—

- (a) that he did not know, and could not reasonably have been expected to know, that the premises were smoke-free (or, as the case may be, that the place or vehicle was smoke-free), or

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(b) that he did not know, and could not reasonably have been expected to know, that no-smoking signs complying with the requirements of this Article were not being displayed in accordance with the requirements of this Article, or

(c) that on other grounds it was reasonable for him not to comply with the duty.

(7) If a person charged with an offence under paragraph (5) relies on a defence in paragraph (6), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(8) A person guilty of an offence under paragraph (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) References in this Article, however expressed, to premises, places or vehicles which are smoke-free are to those premises, places or vehicles so far as they are smoke-free under or by virtue of this Order.

Offences relating to smoking

Offence of smoking in smoke-free place

8.—(1) In this Article, a “smoke-free place” means any of the following—

(a) premises so far as they are smoke-free under or by virtue of Articles 3 and 4,

(b) a place, so far as it is smoke-free by virtue of Article 5,

(c) a vehicle, so far as it is smoke-free by virtue of Article 6.

(2) A person who smokes in a smoke-free place commits an offence.

(3) It is a defence for a person charged with an offence under paragraph (2) to show that he did not know, and could not reasonably have been expected to know, that it was a smoke-free place.

(4) If a person charged with an offence under this Article relies on the defence in paragraph (3), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(5) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offence of failing to prevent smoking in smoke-free place

9.—(1) It is the duty of any person who controls or is concerned in the management of smoke-free premises to cause a person smoking there to stop smoking.

(2) Regulations may provide for a duty corresponding to that mentioned in paragraph (1) to be imposed on specified persons or descriptions of person in relation to—

(a) places which are smoke-free by virtue of Article 5,

(b) vehicles which are smoke-free by virtue of Article 6.

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(3) A person who fails to comply with the duty in paragraph (1), or any corresponding duty in regulations under paragraph (2), commits an offence.

(4) It is a defence for a person charged with an offence under paragraph (3) to show—

- (a) that he took reasonable steps to cause the person in question to stop smoking, or
- (b) that he did not know, and could not reasonably have been expected to know, that the person in question was smoking, or
- (c) that on other grounds it was reasonable for him not to comply with the duty.

(5) If a person charged with an offence under this Article relies on a defence in paragraph (4), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(6) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(7) References in this Article, however expressed, to premises, places or vehicles which are smoke-free are to those premises, places or vehicles so far as they are smoke-free under or by virtue of this Order.

Enforcement

Fixed penalties for offences under Articles 7 and 8

10.—(1) An authorised officer of a district council who has reason to believe that a person has committed an offence under Article 7(5) or 8(2) on premises, or in a place or vehicle, within the district of the council may give him a penalty notice in respect of the offence.

(2) A penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty in accordance with this Order.

(3) Schedule 1 makes further provision about fixed penalties.

Enforcement by district councils

11.—(1) It is the duty of a district council to enforce, as respects premises, places and vehicles in its district, the provisions of this Order and regulations made under it.

(2) In this Order, “authorised officer”, in relation to a district council, means any person (whether or not an officer of the council) who is authorised by it in writing, either generally or specially, to act in matters arising under this Order.

(3) If regulations so provide, no person is to be so authorised unless he has such qualifications as are specified in the regulations.

(4) Schedule 2 makes provision about the powers of authorised officers.

(5) The Department may make grants to district councils to defray expenditure incurred by them in exercising their functions under this Order.

(6) Grants under paragraph (5) shall be of such amounts, and subject to such conditions, as the Department may, with the approval of the Department of Finance and Personnel, determine.

Obstruction of officers

12.—(1) Any person who intentionally obstructs an authorised officer of a district council, acting in the exercise of his functions under this Order, commits an offence.

(2) Any person who without reasonable cause fails to give to an authorised officer, acting in the exercise of his functions under this Order, any facilities, assistance or information which the authorised officer reasonably requires of him for the performance of those functions commits an offence.

(3) A person commits an offence if, in purported compliance with any requirement of an authorised officer under paragraph (2)—

- (a) he makes a statement which is false or misleading, and
- (b) he either knows that it is false or misleading or is reckless as to whether it is false or misleading.

“False or misleading” means false or misleading in a material particular.

(4) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences by bodies corporate, etc.

13.—(1) For the purposes of this Order, section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(2) If an offence committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on his part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In paragraph (2) “partner” includes a person purporting to act as a partner.

(4) If an offence committed by an unincorporated association (other than a partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
 - (b) to be attributable to any neglect on the part of such an officer or member,
- the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) Proceedings for an offence alleged to have been committed by a partnership shall be brought in the name of the partnership (and not in that of any of the partners).

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(6) Proceedings for an offence alleged to have been committed by an unincorporated association (other than a partnership) shall be brought in the name of the association (and not in that of any of its members).

(7) Rules of court relating to the service of documents shall have effect as if the partnership or unincorporated association were a body corporate.

(8) In proceedings for an offence brought against a partnership or an unincorporated association, the following provisions apply as they apply in relation to a body corporate—

- (a) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c.15),
- (b) Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26).

(9) A fine imposed on a partnership on its conviction for an offence is to be paid out of the partnership assets.

(10) A fine imposed on an unincorporated association on its conviction for an offence is to be paid out of the funds of the association.

(11) Paragraphs (5) and (6) are not to be read as prejudicing any liability of a partner, officer or member under paragraph (2) or (4).

(12) In this Article “offence” means an offence under any provision of this Order.

Sale of tobacco, etc to young persons

Sale of tobacco, etc. to young persons

14. The Department may by regulations amend—

- (a) Articles 3(1), 4(1) and 5(1) of the Health and Personal Social Services (Northern Ireland) Order 1978 (NI 26) (sale of tobacco, etc. to persons under 16), and
- (b) Article 5(1) and (2) of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (NI 25) (display of warning statements in retail premises and vending machines),

so as to substitute for the age for the time being specified in each of those provisions such other age (not being an age lower than 16 years) as the Department considers appropriate.

Supplementary

Regulations

15.—(1) Regulations under this Order may include such incidental, supplementary, consequential, transitory, transitional or saving provisions as the Department considers appropriate.

(2) Subject to paragraph (3), regulations under this Order shall be subject to negative resolution.

(3) Regulations under—

- (a) Article 4, 5, 6 or 14,
- (b) paragraph 5 or 8 of Schedule 1,

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shall not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

Application to the Crown

16.—(1) This Order binds the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

(2) No contravention by the Crown of this Order or any regulations under it makes the Crown criminally liable; but the High Court may, on the application of a district council for the district in which the contravention is alleged to have taken place, declare unlawful any act or omission of the Crown which would, but for this paragraph, have been an offence.

(3) Paragraph (2) does not extend to persons in the public service of the Crown.

Repeal

17. In section 57 of the Transport Act (Northern Ireland) 1967 (c.37) (power of railway undertaking to make byelaws) in subsection (1)(c) the words “the smoking of tobacco in railway carriages and elsewhere and” are repealed.

Christine Cook

Deputy Clerk of the Privy Council

SCHEDULES

Article 10

SCHEDULE 1

FIXED PENALTIES

Contents of penalty notice

1. A penalty notice must—
 - (a) state the alleged offence, and
 - (b) give such particulars of the circumstances alleged to constitute it as are necessary for giving reasonable information about it.
- 2.—(1) A penalty notice must also state—
 - (a) the amount of the penalty and the period for its payment,
 - (b) the discounted amount and the period for its payment,
 - (c) the consequences of not paying the penalty or the discounted amount before the end of the period mentioned in head (a) or (b),
 - (d) the person to whom and the address at which payment may be made,
 - (e) by what method payment may be made,
 - (f) the person to whom and the address at which any representations relating to the notice may be made.

(2) The person mentioned in sub-paragraph (1)(d) and (f) must be the district council on whose behalf the authorised officer was acting when he gave the notice.
3. A penalty notice must also—
 - (a) inform the person to whom it is given of his right to be tried for the alleged offence, and
 - (b) explain how that right may be exercised.
4. A penalty notice must be in a form specified in regulations.

Amount of penalty and period for payment

5. The penalty is such amount as may be specified in regulations.
6. The period for payment of the penalty is the period of 29 days beginning with the day on which the notice is given.

Discounted amount and period for payment

- 7.—(1) A discounted amount is payable instead of the amount specified in regulations under paragraph 5 if payment is made before the end of the period for payment of the discounted amount.
- (2) That period is the period of 15 days beginning with the day on which the notice is given, unless the 15th day is not a working day.

(3) If the 15th day is not a working day, that period is the period beginning with the day on which the notice is given and ending immediately after the first working day following the 15th day.

(4) In this paragraph “working day” means any day which is not a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971 (c.80).

8. The discounted amount is such amount as may be specified in regulations.

Effect of notice and payment

9.—(1) Proceedings for the offence in respect of which a penalty notice was given may not be brought before the end of the period for payment of the penalty.

(2) Sub-paragraph (1) does not apply if the person to whom the notice was given has asked in accordance with paragraphs 14 and 15 to be tried for the alleged offence.

10. If the penalty is paid in accordance with the penalty notice before the end of the period for payment of the penalty, no proceedings for the offence may be brought and paragraph 14 does not apply.

11. If the discounted amount is paid in accordance with the penalty notice before the end of the period for payment of the discounted amount, no proceedings for the offence may be brought and paragraph 14 does not apply.

12. If proceedings have been brought pursuant to a request under paragraph 14, but then the penalty or discounted amount is paid as mentioned in paragraph 10 or 11 those proceedings may not be continued.

13. In any proceedings, a certificate is evidence of the facts which it states if it—

- (a) purports to be signed by or on behalf of the person responsible for the financial affairs of the district council on whose behalf the authorised officer who gave a penalty notice was acting, and
- (b) states that payment of the penalty or discounted amount in pursuance of the notice was or was not received by a date specified in the certificate.

Trial

14. If the person to whom a penalty notice has been given asks to be tried for the alleged offence, proceedings may be brought against him.

15. Any request to be tried must be made—

- (a) by notice given to the district council in question before the end of the period for payment of the penalty,
- (b) in the manner specified in the penalty notice.

Withdrawal of notices

16.—(1) This paragraph applies if a district council considers that a penalty notice which an authorised officer acting on its behalf has given to a person ought not to have been given.

(2) The district council may give notice to that person withdrawing the penalty notice.

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- (3) If it does so—
 - (a) it must repay to that person any amount which has been paid by way of penalty in pursuance of the penalty notice, and
 - (b) no proceedings may be brought or continued against that person for the offence in question.
- (4) The council must consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

Use of fixed penalty receipts

- 17.—(1) A district council may use its fixed penalty receipts only for the purposes of—
- (a) its functions under this Order; or
 - (b) such other functions (if any) as are specified in regulations made by the Department.
- (2) A council shall supply the Department with such information relating to its use of its fixed penalty receipts as the Department may require.
- (3) The Department may by regulations—
- (a) make provision for what a council is to do with its fixed penalty receipts—
 - (i) pending their being used for the purposes mentioned in sub-paragraph (1);
 - (ii) if they are not so used before such time after their receipt as may be specified in the regulations;
 - (b) make provision for accounting arrangements in respect of a council's fixed penalty receipts.
- (4) The provision that may be made under sub-paragraph (3)(a)(ii) includes (in particular) provision for the payment of sums to a person (including the Department) other than the council.
- (5) Before making regulations under this paragraph the Department shall consult district councils and—
- (a) such associations or bodies representative of councils;
 - (b) such associations or bodies representative of officers of councils; and
 - (c) such other persons or bodies,
- as the Department considers appropriate.
- (6) In this Article references to a district council's fixed penalty receipts are to the sums received by the council in respect of fixed penalties under this Schedule.

Article 11

SCHEDULE 2

POWERS OF AUTHORISED OFFICERS

- 1. An authorised officer has the right to do any of the following, on production (if required) of his written authority—

- (a) at any reasonable hour, enter any premises (other than premises used only as a private dwelling house not open to the public) which he considers it is necessary for him to enter for the purpose of the proper exercise of his functions under this Order,
- (b) there carry out such inspections and examinations as he considers necessary for that purpose,
- (c) if he considers it necessary for that purpose, require the production of any substance or product, and inspect it, and take and retain samples of or extracts from it,
- (d) take possession of any substance or product on the premises, and retain it for as long as he considers necessary for that purpose,
- (e) require any person to give him such information, or afford him such facilities and assistance, as he considers necessary for that purpose.

2. An authorised officer may, if he considers it necessary for the purpose of the proper exercise of his functions under this Order, arrange for any substance, product, sample or extract mentioned in paragraph 1(c) or (d) to be analysed.

3. An authorised officer may make such purchases and secure the provision of such services as he considers necessary for the purpose of the proper exercise of his functions under this Order.

4. A person may not be required under paragraph 1 to give any information which he would be entitled to refuse to give in proceedings in the High Court on grounds of legal professional privilege.

5.—(1) A lay magistrate may exercise the power in sub-paragraph (3) if he is satisfied on a complaint in writing substantiated on oath—

- (a) that for the purpose of the proper exercise of the functions of a district council under this Order there are reasonable grounds for entry into any premises (other than premises used only as a private dwelling house not open to the public), and
- (b) of either or both of the matters mentioned in sub-paragraph (2).

(2) The matters are—

- (a) that admission to the premises has been, or is likely to be, refused, and that notice of intention to apply for a warrant under this Schedule has been given to the occupier or a person who reasonably appears to the district council to be concerned in the management of the premises,
- (b) that an application for admission, or the giving of such notice, would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return.

(3) The lay magistrate may by warrant signed by him authorise any authorised officer to enter the premises, if need be by force.

(4) Such a warrant continues in force until the end of the period of one month beginning with the date on which the lay magistrate signs it.

6. An authorised officer entering any premises by virtue of paragraph 1, or of a warrant under paragraph 5, may take with him such other persons and such equipment as he considers necessary.

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7. If premises which an authorised officer is authorised to enter by a warrant under paragraph 5 are unoccupied, or if the occupier is temporarily absent, then on leaving them that officer must leave the premises as effectively secured against unauthorised entry as he found them.

8. If by virtue of paragraph 1(d) an authorised officer takes possession of anything, he must leave on the premises from which it was taken a statement giving particulars of what he has taken and stating that he has taken possession of it.

9. In this Schedule “premises” includes any place or vehicle.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the prohibition of smoking in certain premises, places and vehicles and for amending the minimum age of persons to whom tobacco may be sold.