

SCHEDULES

SCHEDULE 1

Article 10

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.

Status: Point in time view as at 01/06/2017.

Changes to legislation: There are currently no known outstanding effects for the *The Smoking (Northern Ireland) Order 2006*. (See end of Document for details)

(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.

(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.

[^{F1}Power to amend or modify Schedule

Textual Amendments

- F1** Sch. 1 para. 18 and preceding cross-heading added (1.6.2017 for specified purposes) by [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016 \(c. 26\)](#), **ss. 5(7), 20(3)**; S.R. 2017/91, art. 2(e)

- 18** The Department may by regulations—
- (a) amend this Schedule so as to modify its application in relation to penalty notices issued by an authorised officer of an enforcement authority of a particular kind,
 - (b) provide for this Schedule to apply with modifications in relation to such notices]

SCHEDULE 2

Article 11

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—

Status: Point in time view as at 01/06/2017.

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- (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.
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.

Status:

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Changes to legislation:

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