Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2006 No. (N.I.)

NORTHERN IRELAND

The Smoking (Northern Ireland) Order 2006

Made - - - - 2006
Coming into operation in accordance with Article 1(2) and (3)

At the Court at Buckingham Palace, the ** day of ** 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

(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 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.

(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.

(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

(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.

(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.