
DRAFT STATUTORY INSTRUMENTS

2006 No.

The Smoking (Northern Ireland) Order 2006

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).

(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.