



Department of
**Health, Social Services
and Public Safety**

An Roinn

**Sláinte, Seirbhísí Sóisialta
agus Sábháilteachta Poiblí**

www.dhsspsni.gov.uk

SMOKE-FREE PREMISES AND VEHICLES

CONSULTATION ON PROPOSED REGULATIONS TO BE MADE UNDER POWERS IN THE DRAFT SMOKING (NORTHERN IRELAND) ORDER 2006

September 2006

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1. Introduction

- 1.1 The draft Smoking (Northern Ireland) Order 2006 (the draft Order) is currently before Parliament. It is anticipated that it will complete its legislative process in November 2006. If approved, the Order will provide for enclosed public places and workplaces to be smoke-free and give the Department of Health, Social Services and Public Safety (the Department) the power to make regulations in a number of areas. It is anticipated that the smoke-free legislation will be introduced in April 2007. The draft regulations that the Department proposes to make are set out in this consultation document. **It should be noted that the draft regulations are based on the assumption that the draft Order will be approved by Parliament.**
- 1.2 The medical and scientific evidence of the risks to health from exposure to secondhand smoke is well established. Smoking is the single greatest cause of premature death and preventable illness in Northern Ireland. Tobacco is a major cause of health inequalities and is the principal cause of the gap in life expectancy between rich and poor.
- 1.3 In October 2005, the Minister for Health, Social Services and Public Safety, announced that legislative measures would be introduced in April 2007 to protect employees and the public from secondhand smoke in enclosed public places and workplaces in Northern Ireland.
- 1.4 The policy objectives of the draft Order are to:
- reduce the risks to health from exposure to secondhand smoke;
 - recognise a person's right to be protected from harm and to enjoy smoke-free air;
 - increase the benefits of smoke-free enclosed public places and workplaces for people trying to give up smoking so that they can succeed in an environment where social pressures to smoke are reduced; and
 - save lives over the next decade by reducing exposure to hazardous secondhand smoke.

Experience elsewhere also suggests that smoke-free legislation helps reduce smoking prevalence.

- 1.5 The smoke-free provisions within the draft Order relate to smoking of tobacco or anything that contains tobacco, or smoking any other substance, including manufactured cigarettes, hand-rolled cigarettes, pipes and cigars. The smoke-free provisions in the draft Order also cover the smoking of waterpipes. According to the World Health Organisation (WHO) advice, "using a waterpipe to smoke tobacco poses a serious potential health hazard to smokers and others exposed to the smoke emitted", and "secondhand smoke from waterpipes is a mixture of tobacco smoke in addition to smoke from the fuel, and therefore poses a serious

health risk for non-smokers. The WHO therefore recommends that “waterpipes should be prohibited in public places consistent with bans on cigarette and other forms of tobacco smoking.”¹

Draft Regulations

- 1.6 The Department proposes to make two sets of regulations under the powers in the Order:
- the Smoke-free (General Provisions) Regulations (Northern Ireland) 2007, which will be subject to the negative resolution procedure; and
 - the Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007, which will be subject to the affirmative resolution procedure.

Consultation

- 1.7 This public consultation provides an opportunity for you to comment on the proposals for regulations. The consultation package includes the draft Regulations and a Questionnaire. The package is also available on the DHSSPS website at:

http://www.dhsspsni.gov.uk/index/consultations/current_consultations.htm

The Department has, as part of an Integrated Impact Assessment Screening of the draft Order, considered the equality implications. It was concluded that an Equality Impact Assessment is not required. The Integrated Impact Assessment Overview is available on the Department’s website:

<http://www.dhsspsni.gov.uk/index/consultations>

A Regulatory Impact Assessment has been prepared and is available on the Department’s website (see above link).

Within this consultation document, the Order refers to the Smoking (Northern Ireland) Order 2006, on the assumption that the draft Order will be approved by Parliament.

How to Respond

- 1.8 The consultation will run from 25 September 2006 to 3 November 2006. The Questionnaire highlights a number of key areas within the proposals for regulations on which the Department would welcome views. In order to facilitate analysis it is important that respondents use the Questionnaire.

Responses must be received by the Department by 5.00pm on 3 November 2006.

¹ World Health Organisation (2005) *Waterpipe Tobacco Smoke: Health effects, research needs and recommended actions by regulators*. WHO, Geneva.

They can be e-mailed via the online response form on the above website or the completed Questionnaire can be posted to:

Investing for Health Team (Tobacco Control)
Room C 4.22
Castle Buildings
Belfast
BT4 3SQ
Tel: 02890520534

Additional Copies

Additional copies of the consultation package can be obtained, free of charge, by contacting the Department's Investing for Health Team either in writing or by telephone. The address and telephone number are shown above. Copies can also be downloaded from the 'consultations' section of the Department's website.

Freedom of Information Act 2000 – Confidentiality of Consultations.

- 1.9 The Department will publish a summary of responses following completion of the consultation process. Your response and all other responses to this consultation, including personal information, may be published or disclosed on request in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA).
- 1.10 The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response please read the paragraphs below on the confidentiality of consultations. They provide guidance on the legal position about any information given by you in response to this consultation.
- 1.11 The FOIA gives the public a right of access to any information held by a public authority. This right of access to information includes information provided in response to a consultation. However, the public authority can decide whether any information provided by you, including information about your identity, should be made public or be treated as confidential. If you do not want information about your identity to be made public, please include an explanation with your response.
- 1.12 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:
 - the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
 - the Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature;

- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

1.13 For further information about confidentiality of response please contact the Information Commissioner's Office (or the website at: <http://www.informationcommissioner.gov.uk>)

For further information about this particular consultation please contact the Investing for Health Team at the above address.

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

2. Draft Smoke-free (General Provisions) Regulations (Northern Ireland) 2007

Proposals

- 2.1 The Smoke-free (General Provisions) Regulations (Northern Ireland) 2007 will set out specific arrangements for the following aspects of smoke-free legislation:
- definitions of “enclosed” and “substantially enclosed”;
 - signage requirements for smoke-free premises and vehicles;
 - duties to comply with signage requirements for smoke-free vehicles;
 - duties to prevent smoking in smoke-free vehicles; and
 - the form of penalty notices.

Regulation 2: Definitions of “enclosed” and “substantially enclosed” premises

- 2.2 The Department proposes to follow the model for defining “enclosed and “substantially enclosed” premises which is set out in Scotland’s smoke-free regulations and in the draft smoke-free regulations for England.
- 2.3 **Enclosed premises:** premises will be considered to be enclosed if they have a ceiling or roof and, except for doors, windows or passageways, are wholly enclosed, whether on a permanent or temporary basis.
- 2.4 **Substantially enclosed premises:** premises will be considered to be substantially enclosed if they have a ceiling or roof, but there are openings in the walls which are **less than half** of the total area of walls, including other structures that serve the purpose of walls and constitute the perimeter of the premises. When determining the area of an opening, no account can be taken of openings in which doors, windows or other fittings can be opened or shut.
- 2.5 For this regulation, “roof” includes any fixed or movable structure or device which is capable of covering all or part of premises as a roof. This would include retractable canvas awnings.

2.6 Regulations 3 & 4: Signage requirements for smoke-free premises and vehicles

- The draft Order requires that no-smoking signs are to be displayed in smoke-free premises in accordance with requirements set out in regulations. Likewise, regulations will also set out requirements for signs to be displayed in smoke-free vehicles.
- 2.7 Proposed requirements for signs in smoke-free premises and vehicles are set out below. It is intended that signage requirements should be proportionate and should not present unnecessary burdens on business. To assist with compliance during the lead-up to implementation of smoke-free legislation, the Department will make available signs that will meet requirements as set out in regulations.

- 2.8 **Signage requirements for smoke-free premises:** in these regulations, it is proposed that smoke-free premises will be required to display a no-smoking sign that meets minimum requirements at each public entrance to the premises, to be displayed in a position that is prominently visible to persons entering the premises.
- 2.9 The minimum requirements are that the no-smoking sign is to:
- be a flat, rectangular sign with minimum dimensions of A5 in size (148mm by 210mm);
 - display the international “no smoking” symbol, consisting of a graphic representation of a burning cigarette enclosed in a red circle with a red bar across it, at least 75mm in diameter; and
 - carry the following words, in characters that can be easily read:

“No smoking.

It is against the law to smoke in these premises.”

- 2.10 Article 4 of the draft Order provides for some premises to continue to allow smoking if certain conditions are met. Regulations will allow certain premises, such as hotels or residential care homes and nursing homes, to have designated rooms for smoking, and in these cases the required wording for the sign, in place of what is required in the paragraph above, is proposed to be:

“No smoking.

It is against the law to smoke in these premises except in a designated room”

- 2.11 The Department wishes to provide flexibility in the design and wording of signage for smoke-free premises, and proposes that the design of signs be at the discretion of the manager of the premises, provided that minimum requirements are met. In addition, for the words “these premises” may be substituted references to the particular smoke-free premises in which the sign is displayed, for example “this salon”, “this pub”, or “this gym”.
- 2.12 **Signage requirements for smoke-free vehicles:** in these regulations, it is proposed that smoke-free vehicles will be required to display at least one no-smoking sign that meets minimum requirements in any compartment of the vehicle used by operators, crew members or passengers, which is wholly or partly covered by a roof. The sign is to be displayed in a position that is prominently visible to a person entering the vehicle.
- 2.13 The minimum requirements are that the sign for smoke-free vehicles is to display the international “no smoking” symbol, consisting of a graphic representation of a burning cigarette enclosed in a red circle with a red bar across it, at least 75mm in diameter.
- 2.14 To provide flexibility in the design of signage for smoke-free vehicles it is proposed that the design of signs be at the discretion of the operator of the vehicle, provided that the minimum requirements are met.

- 2.15 For a number of reasons, it is proposed that signage requirements for smoke-free vehicles should be more relaxed than those for smoke-free premises. The majority of public transport is smoke-free and already displays no-smoking signs. It is considered that the replacement of pre-existing signage in such vehicles is unnecessary. It is not the intention to create any conflict with signage requirements currently in place for smoke-free vehicles in Scotland, or with requirements that might be incorporated into Wales and England smoke-free legislation.

Duties to comply with signage requirements for smoke-free vehicles

- 2.16 It is proposed that regulations should require the operator of a smoke-free vehicle to have the same duties to display no-smoking signs that conform to legislative requirements as a person who is concerned with the management of smoke-free premises (as set out in Article 7(1) of the draft Order).
- 2.17 The draft regulations define operator in relation to a smoke-free vehicle to mean any person with management responsibilities for the vehicle. Arrangements for smoke-free vehicles are set out in the draft Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007.

Regulation 5: Duties to prevent smoking in smoke-free vehicles

- 2.18 It is proposed that regulations will require the operator, any driver or any person on the vehicle who is responsible for public order or safety (such as the driver/conductor, guard or ticket inspector) to have duties to prevent smoking in a smoke-free vehicle. This will be the same duty to prevent smoking in a smoke-free vehicle as the duty set out for persons who control or are concerned in the management of smoke-free premises (as set out in Article 9(1) of the draft Order) to prevent smoking. In some cases, the operator of a vehicle might not be in a position to know whether someone is smoking, for example a train driver who is located in a separate compartment on the train. The defences set out in Article 9 (4) for the offence of failing to prevent smoking in a smoke-free place could be applicable in such a case.

Regulation 6: Fixed Penalty Notices

- 2.19 **Enforcement:** The Government's intention is to create a supportive environment where people are encouraged to comply with the new legislation. Evidence from other countries shows that compliance with smoke-free laws has been high and the Department is encouraged by the overwhelming public support expressed for comprehensive controls on smoking in enclosed public places and workplaces in Northern Ireland. The approach to enforcement will be non-confrontational and focused on raising awareness and understanding to ensure compliance. Enforcement officers will work closely with local business to build compliance through education, advice and support. We expect that enforcement action will be considered only when the seriousness of the situation warrants it. Any enforcement action that is taken will be fair, proportional and consistent. Enforcement inspections will be based on risk and, where possible, combined with other regulatory inspections to reduce burdens on business.

- 2.20 District councils will enforce the smoke-free legislation. The Department expects that councils will collaborate with other inspection and enforcement bodies where necessary to enable councils to carry out their enforcement responsibilities. Councils will have enforcement responsibilities for both smoke-free premises and smoke-free vehicles.
- 2.21 Resources to meet the costs of these additional enforcement responsibilities are being made available.
- 2.22 **Form of Fixed Penalty Notices:** the Schedule to the draft regulations specifies proposed forms of fixed penalty notices to be used for no-smoking sign offences (as specified in Article 7 of the draft Order) and the offence of smoking in a smoke-free place (as specified in Article 8 of the draft Order).
- 2.23 The regulations provide that, where there is a change to the amount of a fixed penalty, discounted amount or change to a level on the standard scale, the specified form shall be varied to reflect that change without a requirement to amend the regulations. The regulations also allow for district councils to:
- a. use a form in a different size or design, provided that the substance of the form is not changed;
 - b. include additional information about how payments can be made; and
 - c. include coats of arms, logos or other devices, or any illustration to assist with the completion of the notice.

STATUTORY RULES OF NORTHERN IRELAND

2007 No.

PUBLIC HEALTH

The Smoke-free (General Provisions) Regulations (Northern Ireland) 2007

Made

Coming into operation

The Department of Health, Social Services and Public Safety(**a**), makes the following Regulations in exercise of the powers conferred by Articles 3(5), 7(2), (3) and (4), 9(2), 10(3) and 15(1) of, and paragraph 4 of Schedule 1 to, the Smoking (Northern Ireland) Order 2006(**b**):

Citation, commencement and interpretation

1 –(1) These Regulations may be cited as the Smoke-free (General Provisions) Regulations (Northern Ireland) 2007 and shall come into operation on 2007.

(2) In these Regulations-

“A5 sign” means a flat, rectangle sign that is not less than 148 millimetres by 210 millimetres;

“the Order” means the Smoking (Northern Ireland) Order 2006;

“entrance” means an entrance for use by persons;

“no smoking symbol” means a symbol which consists of a graphic representation of a burning cigarette enclosed in a red circle with a red bar across it, at least 75 millimetres in diameter;

“operator” in relation to a vehicle means any person with management responsibilities for the vehicle;

“smoke-free premises” means all public places and workplaces other than those that are exempt by virtue of regulations made under Article 4 of the Order; and

“smoke-free vehicle” means a vehicle in respect of which regulations under Article 6 of the Order have applied smoke-free provision.

(a) See S.I. 1999/283 (N.I.1); Article 3(6)

(b) See S.I. 2006/ (N.I.)

Enclosed and substantially enclosed premises

2. –(1) For the purposes of Article 3 of the Order, premises are enclosed if they have a ceiling or roof and, except for doors, windows and passageways, they are wholly enclosed either permanently or temporarily.

(2) For the purposes of Article 3 of the Order, premises are substantially enclosed if they have a ceiling or roof but there is-

- (a) an opening; or
- (b) an aggregate area of openings,

in the walls which is less than half of the area of the walls, including other structures that serve the purpose of walls and constitute the perimeter of the premises.

(3) In determining the area of an opening or an aggregate area of openings for the purposes of paragraph (2), no account is to be taken of openings in which there are doors, windows or other fittings that can be opened or shut.

(4) In this regulation “roof” includes any fixed or moveable structure or device which is capable of covering all or part of premises as a roof, including for example a canvas awning.

No-smoking signs in premises

3. –(1) In each entrance to smoke-free premises there shall be displayed in a prominent position at least one A5 sign that-

- (a) displays the no smoking symbol; and
- (b) contains in characters that can be easily read the following words-

“No smoking.
It is against the law to smoke in these premises.”

(2) Where in accordance with regulations made under Article 4 of the Order any room in smoke-free premises is designated as one in which smoking is permitted, for the words which are required by paragraph (1)(b) there are substituted the words-

“No smoking.
It is against the law to smoke in these premises except in a designated room.”

(3) For the words required by paragraph (1) or (2) there may be substituted words which differ only in that for “these premises” there are substituted words which refer to the particular smoke-free premises in which a sign is displayed (such as “this hotel”).

No-smoking signs in vehicles

4. –(1) The operator of a smoke-free vehicle shall be under a duty corresponding to that in Article 7(1) of the Order to make sure that at least one no smoking symbol is displayed in a prominent position in each compartment of his vehicle.

(2) In paragraph (1) “compartment” includes-

- (a) any compartment for use by the driver; and
- (b) any compartment for use by the persons who are conveyed;

which is wholly or partly covered by a roof.

(3) In this regulation “roof” does not include any roof that is completely stowed away so that it does not cover any part of a compartment in which persons may travel.

Failing to prevent smoking in smoke-free vehicles

5. The following persons are under a duty corresponding to that in Article 9(1) of the Order to cause any person who is smoking in a smoke-free vehicle to stop smoking-

- (a) the operator;
- (b) the driver; and
- (c) any person on a vehicle who is responsible for order or safety on it.

Form of fixed penalty notice

6. –(1) The penalty notice forms set out in the Schedule to these Regulations are specified in relation to the offences described in them.

(2) Where there is a change to the amount of a fixed penalty or a discounted amount or to a level on the standard scale, the specified form shall reflect that change.

(3) Nothing in those forms shall prevent a district council from-

- (a) using a form in different size or design, provided that the substance of the form is not changed;
- (b) including additional information on how payments can be made; or
- (c) including coats of arms, logos or other devices or any other illustration to assist with the completion of the notice.

Sealed with the Official Seal of the Department of Health, Social
Services and Public Safety on 2007

(L.S)

senior officer of the Department
of Health, Social Services and Public Safety

SCHEDULE

Regulation 6(1)

Penalty Notice Forms

THE SCHEDULE

Form 1 – Failing to display prescribed no-smoking signs or failing to display no-smoking signs in a prescribed manner.

[NAME OF DISTRICT COUNCIL]
[ADDRESS OF DISTRICT COUNCIL]

**SMOKING (NORTHERN IRELAND) ORDER 2006:
ARTICLE 7 (FAILURE TO DISPLAY NO-SMOKING SIGNS IN ACCORDANCE
WITH REQUIREMENTS MADE BY OR UNDER ARTICLE 7)**

FIXED PENALTY NOTICE

PENALTY AMOUNT £200

PART 1: RECIPIENT COPY

Penalty Notice number: _____

Full name of alleged offender: _____

Address of alleged offender: _____

Post code: _____

Date of birth: _____ **Sex:** *Male, female (circle one)*

I, (*name*), an authorised officer of the [name of District Council] under Article 11 of the Smoking (Northern Ireland) Order 2006, have reason to believe that you committed an offence under Article 7 of the Smoking (Northern Ireland) Order 2006 (failure to display no-smoking signs in accordance with requirements made by or under Article 7) in premises, a place or vehicle in which [name of District Council] has enforcement responsibilities.

The circumstances alleged to constitute the offence are that at:

_____ (*time*) on _____ (*date*)

you, at/on the following premises, place or vehicle (*where alleged offence took place, including address, if any*):

being premises, a place or vehicle to which the provisions of Article 7 of the Smoking (Northern Ireland) Order 2006 applies, allegedly (*details of offence*):

This notice offers you the opportunity of discharging any liability for conviction for that offence by payment of a fixed penalty of **£200 (two hundred pounds)**. No proceedings will be taken for this offence before the

expiration of 29 days following the date of this notice. You will not be liable to conviction for the offence if you pay the fixed penalty during the period of 29 days from the date of this notice.

You can pay a discounted amount of £150 (one hundred and fifty pounds) if you pay within 15 days from the date of this notice.

Information for the immediate attention of the person who has been issued with this penalty notice is at Part 2 of this notice. Details about how to pay this fixed penalty is at Part 3 of this notice. Details about how to request a court hearing in relation to this alleged offence is at Part 4 of this notice.

Signature of authorised officer

Date of issue

PART 2: INFORMATION FOR THE IMMEDIATE ATTENTION OF THE PERSON WHO HAS BEEN ISSUED WITH THIS PENALTY NOTICE:

You have received this notice because the authorised officer of [name of District Council] named in Part 1 of this notice has reason to believe that you have committed the offence of failing to display a no-smoking sign in accordance with requirements made by or under Article 7 as described in Part 1. Within 29 days of the **date of issue** of this notice, you **must either** pay the penalty **or** request that the matter be heard by a court. You may not do both.

If you fail to do either, [name of District Council] as an enforcement authority by virtue of Article 11 of the Smoking (Northern Ireland) Order 2006, may pursue this matter in court. A person found guilty of the offence of failing to display a no-smoking sign is liable on summary conviction to a fine not exceeding level 3 on the standard scale, as specified in Article 7(8) of the Smoking (Northern Ireland) Order 2006.

PART 3: PAYING THE PENALTY

The amount of the fixed penalty is **£200 (two hundred pounds)**, which must be paid within 29 days of the date of issue of this penalty notice, as shown in Part 1.

You can pay a discounted amount of **£150 (one hundred and fifty pounds)** if you pay within 15 days of the date of issue of this penalty notice, as shown in Part 1.

If you choose to pay this penalty, no further action will be taken in respect to the alleged offence described at Part 1 of this penalty notice. The payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction being made against you.

Payment may be made by completing Part 3A below and returning Part 3A with payment to the address stated on Part 3A, or by completing Part 3A below and paying in person at the [name of District Council]. Acceptable methods of payment are cash, cheque, postal order or money order.

Cheques, postal orders or money orders should be made payable to (name and address of enforcement authority). If you chose to pay this penalty in cash by post, this must be sent by registered post, and proof of posting must be retained. If you require a receipt for the payment of the penalty, you must ask for one at the time of payment, and if paying by post you must provide a stamped, self-addressed envelope.

WARNING: LATE PAYMENT WILL NOT BE ACCEPTED. YOU WILL NOT BE SENT A REMINDER.



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**PART 3A: PAYMENT OF FIXED PENALTY ISSUED UNDER ARTICLE 7 OF THE
SMOKING (NORTHERN IRELAND) ORDER 2006, (FAILURE TO DISPLAY
NO-SMOKING SIGNS IN ACCORDANCE WITH REQUIREMENTS MADE BY
OR UNDER ARTICLE 7)**

This slip must accompany all payments

To: [Name and address of District Council where payment should be remitted].

Penalty Notice number: _____

I enclose the amount of
(tick one box)

£150

**(if payment will be received within 15
days of the issue of this penalty notice)**

£200

**(if payment will be received within 29
days of the issue of this penalty notice)**

Full name: _____

Address: _____

Post code:

Signature

Date

PART 4: REQUESTING A COURT HEARING

If you wish to contest the issue of this penalty notice and have your case heard in a court of law, **you must** complete Part 4A below in full and return it by post to the address stated on Part 4A within 29 days of the date of issue of this notice.

If you choose to request a court hearing, you must do so by completing Part 4A, or by writing to [name of District Council] at the address stated on Part 4A, giving your details, the penalty notice number (which can be found in Part 1 of this notice) and an address at which a summons can be served on you. The summons will tell you when and where to attend court. Only the recipient of this penalty notice (the person named at Part 1) may request a court hearing.

If you have any other questions about this penalty notice, please contact [name of District Council and contact details].



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PART 4A: REQUEST FOR ALLEGED OFFENCE TO BE DEALT WITH BY A COURT OF LAW

To: [Name and address of District Council].

Penalty Notice number: _____

I wish to be dealt with by a court of law for the alleged offence described in Part 1 of this notice.

Full name: _____

Address: _____

_____ **Post code:** _____

Signature

Date

Form 2 – Smoking in a smoke-free place.

[NAME OF DISTRICT COUNCIL]
[ADDRESS OF DISTRICT COUNCIL]

**SMOKING (NORTHERN IRELAND) ORDER 2006:
ARTICLE 8 (OFFENCE OF SMOKING IN A SMOKE-FREE PLACE)**

FIXED PENALTY NOTICE

PENALTY AMOUNT £50

PART 1: RECIPIENT COPY

Penalty Notice number: _____

Full name of alleged offender: _____

Address of alleged offender: _____

Post code: _____

Date of birth: _____ **Sex:** *Male, female (circle one)*

I, (*name*), an authorised officer of the [name of District Council] under Article 11 of the Smoking (Northern Ireland) Order 2006, have reason to believe that you committed an offence under Article 8 of the Smoking (Northern Ireland) Order 2006 (smoking in a smoke-free place) within premises, a place or vehicle in which [name of District Council] has enforcement responsibilities. Article 8(1) provides that smoke-free places include smoke-free premises and smoke-free vehicles.

The circumstances alleged to constitute the offence are that at:

_____ (*time*) on _____ (*date*)

you, at/on the following premises, place or vehicle (*where alleged offence took place, including address, if any*):

being premises, a place or vehicle to which the provisions of Article 8 of the Smoking (Northern Ireland) Order 2006 applies allegedly (*details of offence*):

This notice offers you the opportunity of discharging any liability for conviction for that offence by payment of a fixed penalty of **£50 (fifty pounds)**. No proceedings will be taken for this offence before the expiration of 29 days following the date of this notice. You will not be liable to conviction for the offence if you pay the fixed penalty during the period of 29 days from the date of this notice.

You can pay a discounted amount of £30 (thirty pounds) if you pay within 15 days from the date of this notice.

Information for the immediate attention of the person who has been issued with this penalty notice is at Part 2 of this notice. Details about how to pay this fixed penalty is at Part 3 of this notice. Details about how to request a court hearing in relation to this alleged offence is at Part 4 of this notice.

Signature of authorised officer

Date of issue

PART 2: INFORMATION FOR THE IMMEDIATE ATTENTION OF THE PERSON WHO HAS BEEN ISSUED WITH THIS PENALTY NOTICE:

You have received this notice because the authorised officer of [name of District Council] named in Part 1 of this notice has reason to believe that you have committed the offence of smoking in a smoke-free place as described in Part 1. Within 29 days of the **date of issue** of this notice, you **must either** pay the penalty **or** request that the matter be heard by a court. You may not do both.

If you fail to do either, [name of District Council] as an enforcement authority by virtue of Article 11 of the Smoking (Northern Ireland) Order 2006, may pursue this matter in court. A person found guilty of the offence of smoking in a smoke-free place is liable on summary conviction to a fine not exceeding level 3 on the standard scale, as specified in Article 8(5) of the Smoking (Northern Ireland) Order 2006.

PART 3: PAYING THE PENALTY

The amount of the fixed penalty is **£50 (fifty pounds)**, which must be paid within 29 days of the date of issue of this penalty notice, as shown in Part 1.

You can pay a discounted amount of **£30 (thirty pounds)** if you pay within 15 days of the date of issue of this penalty notice, as shown in Part 1.

If you choose to pay this penalty, no further action will be taken in respect to the alleged offence described at Part 1 of this penalty notice. The payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction being made against you.

Payment may be made by completing Part 3A below and returning it with payment to the address stated on Part 3A, or by completing Part 3A below and paying in person at the [name and address of District Council]. Acceptable methods of payment are cash, cheque, postal order or money order.

Cheques, postal orders or money orders should be made payable to [name of District Council]. If you chose to pay this penalty in cash by post, this must be sent by registered post, and proof of posting must be retained. If you require a receipt for the payment of the penalty, you must ask for one at the time of payment, and if paying by post you must provide a stamped, self-addressed envelope.

WARNING: LATE PAYMENT WILL NOT BE ACCEPTED. YOU WILL NOT BE SENT A REMINDER.



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**PART 3A: PAYMENT OF FIXED PENALTY ISSUED UNDER ARTICLE 8 OF THE
SMOKING (NORTHERN IRELAND) ORDER 2006, (OFFENCE OF SMOKING
IN A SMOKE-FREE PLACE)**

This slip must accompany all payments

To: [Name and address of District Council where payment should be remitted].

Penalty Notice number: _____

I enclose the amount of **£30** (if payment will be received within 15 days of the issue of this penalty notice)
(tick one box)

£50 (if payment will be received within 29 days of the issue of this penalty notice)

Full name: _____

Address: _____

Post code: _____

Signature

Date

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make provision concerning the prohibition of smoking in certain premises and vehicles pursuant to powers contained in the Smoking (Northern Ireland) Order 2006.

In relation to premises they specify the meaning of “enclosed” and “substantially enclosed” for the purposes of Article 3 of the Order, which provides that premises are smoke-free only in those areas which are enclosed or substantially enclosed (regulation 2).

Regulations 3 and 4 prescribe the requirements for contents and display of no-smoking signs in premises and vehicles. They also impose a duty on operators, drivers and persons responsible for order or safety on relevant vehicles to display signs in such vehicles.

Regulation 5 imposes a duty on such operators, drivers and persons responsible for order and safety to cause persons smoking in smoke-free vehicles to stop smoking.

Regulation 6 introduces the schedule to the regulations which contains penalty notice forms to be used by authorised officers of district councils.

3. Draft Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007

Proposals

- 3.1 The Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007 will set out specific arrangements for the following aspects of smoke-free legislation.
- a. exemptions;
 - b. smoke-free vehicles; and
 - c. fixed penalty amounts and discounted amounts for the offences created under Articles 7 and 8 of the Smoking (Northern Ireland) Order 2006. These offences are:
 1. failure to display no-smoking signs; and
 2. smoking in a smoke-free place.

Exemptions

- 3.2 Article 4 of the draft Order enables regulations to be made providing for specified descriptions of premises, or specified areas within specified descriptions of premises, not to be smoke-free despite the provisions in the Order. Article 4(3) does not allow exemptions for licensed premises or membership clubs. The draft regulations specify these exemptions and the proposed conditions that are to be met for premises to access an exemption.

Regulation 2: Private accommodation

- 3.3 The Government has no intention to make private residential space smoke-free. Proposals in the draft regulations for private accommodation to be smoke-free relate to those private premises that might fall under Article 3 of the draft Order as also being workplaces or places that are open to the public i.e. premises to which the public or a section of the public has access, whether by invitation or not, and whether by payment or not. The aim is to ensure that, apart from in areas of a private dwelling that are used solely as a place of work, the person who lives in the premises can decide themselves whether people are allowed to smoke in the premises.
- 3.4 Under these proposed regulations, any part of a private dwelling that is shared with other premises (including other private dwellings) will be required to be smoke-free if they are open to the public or used as places of work, for example by cleaners. This means, for example, that communal lifts, indoor stairwells or communal corridors in blocks of flats; shared kitchens or laundries in dormitory-style accommodation; or common entrance foyers to apartment blocks will be required to be smoke-free to provide protection within these common spaces from secondhand smoke. Any part of a private dwelling is proposed to be smoke-free if it is used solely as a place of work (other than for types of work specified within the regulations) by:

- a. more than one person who does not live in the dwelling;
 - b. a person who does not live in the dwelling and any person who does live in the dwelling; or
 - c. a person (whether they live in the dwelling or not) who in the course of their work invites persons who do not live or work in the dwelling to attend the part of it which is used solely for work.
- 3.5 The smoke-free requirements in these proposed regulations will not apply to work that is undertaken in any part of a private dwelling if it is undertaken to provide personal care for a person living in the dwelling, to assist with the domestic work of the household in the dwelling, to maintain the structure or fabric of the dwelling, or to install, maintain or remove any service provided to the dwelling for the benefit of persons living in it. This means that there will be no requirement within regulations for an individual not to smoke in his own home if a tradesman, nanny, cleaner, or carer is present. In these cases it is expected that the householder and the person providing services would come to their own agreement about smoking, including when and where smoking can take place within the dwelling, if at all.
- 3.6 It is proposed that within these regulations, self-contained accommodation for temporary or holiday use should be treated similarly to arrangements for private accommodation, including any garage or outhouse for the exclusive use of persons occupying the dwelling. This means that any self-contained short-term rental accommodation, holiday cottage or residential caravan will not be required by regulations to be smoke-free. It is recognised that many providers of these types of accommodation do voluntarily require premises to be smoke-free at all times. These regulations would not affect a provider's right to require accommodation to be entirely smoke-free if desired.

Regulation 3: Accommodation for guests and club members

- 3.7 A designated bedroom in a hotel, guest house, inn, hostel or members' club will not have to be smoke-free if the person in charge of the premises designates that the room is not smoke-free. Under these proposed regulations, a "designated bedroom" means a room which:
- a. is set apart exclusively for sleeping accommodation;
 - b. has been designated by the person having charge of the premises in which the room is situated as being a room in which smoking is permitted;
 - c. has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid floor-to-ceiling walls;
 - d. does not have a ventilation system that ventilates into any other smoke-free part of the premises (except any other designated bedrooms);
 - e. does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
 - f. is clearly marked as a bedroom in which smoking is permitted.

- 3.8 It is not intend that these regulations will allow smoking in dormitories or other rooms within premises which are made available under separate arrangements for persons to share at the same time.

Regulation 4: Other residential accommodation

- 3.9 The Government does not intend through smoke-free legislation to prevent individuals from smoking in areas of premises which are considered to be private residential space. Nevertheless, in certain types of residential accommodation, balance is needed between allowing people to smoke in their own residential spaces and protecting others from exposure to secondhand smoke, including the other people who call the premises home and the people who work there. These regulations propose that designated rooms in the following premises used as accommodation for persons 18 years and over, will not have to be smoke-free, subject to specified conditions;
- a. residential care homes and nursing homes as defined in Articles 10 and 11 of the Health and Personal Social Services (Quality, Improvement & Regulation) (Northern Ireland) Order 2003.
 - b. hospices which, as their whole or main purpose, provide palliative care for persons resident there who are suffering from progressive disease in its final stages; and
 - c. mental health units (see paragraph 3.11) that provide long-term residential accommodation.
- 3.10 Within these types of residential accommodation, “designated room” means either a bedroom or a room used only for smoking which:
- a. has been designated by the person having charge of the premises in which the room is situated as being a room in which smoking is permitted;
 - b. has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid floor-to-ceiling walls;
 - c. does not have a ventilation system that ventilates into any other smoke-free part of the premises (except any other designated smoking rooms);
 - d. does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
 - e. is clearly marked as a room in which smoking is permitted.
- 3.11 Within these proposed regulations, “mental health unit” means any establishment (or part of an establishment) maintained wholly or mainly for the reception and treatment of persons suffering from any form of mental disorder as defined in Article 3(1) of the Mental Health (Northern Ireland) Order 1986. For mental health units, any exemption from smoke-free legislation will be limited to premises that provide “long-term” accommodation. Long-term in relation to residential accommodation in a mental health unit means accommodation which, in the normal course of events, is provided for patients to occupy for not less than six months.

Regulation 5: Prisons

- 3.12 Prisons will not be required to be smoke-free under these proposed regulations. However, the Northern Ireland Prison Service is committed to reflecting the spirit of the legislation through Prison Rules.

Regulation 6: Specialist Tobacconists

- 3.13 The shop premises of a specialist tobacconist will not be required to be smoke-free under these proposed regulations, only for the purposes of sampling smoking products that are not cigarettes or rolling tobacco. For these regulations, the definition of “specialist tobacconist” is the same as specified in section 6(2) of the Tobacco Advertising and Promotion Act 2002. There are few specialist tobacconists in Northern Ireland and the Department will be monitoring this exemption closely. Under these proposed regulations, the entirety of a specialist tobacconist shop is exempted if the premises:
- a. have a ceiling and, except for doors and windows, are completely enclosed on all sides by solid, floor-to-ceiling walls;
 - b. do not have a ventilation system that ventilates into any smoke-free premises;
 - c. do not have any door that opens onto smoke-free premises which is not mechanically closed after use; and
 - d. are clearly marked as premises in which smoking is permitted.

Regulation 7: Offshore installations

- 3.14 A designated room in an offshore installation, as defined in Article 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations (Northern Ireland) 1995 is not smoke-free if it:
- a. has been designated by the person in charge of the installation in which the room is situated as being a room in which smoking is permitted;
 - b. has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
 - c. does not have a ventilation system that ventilates into any other smoke-free part of the premises (except for any other designated rooms);
 - d. does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
 - e. is clearly marked as a room in which smoking is permitted.

Regulation 8: Research and testing facilities

- 3.15 A designated room in a research or testing facility is not smoke-free while it is being used for any research or tests that relate to:
- a. emissions from tobacco and other products used for smoking;
 - b. development of products for smoking with lower fire hazard or the fire safety testing of materials involving products for smoking;

- c. development of smoking or pharmaceutical products that could result in the manufacture of less dangerous products for smoking; or
 - d. smoking cessation programmes.
- 3.16 Within these proposed regulations a “designated room” in a research or testing facility is not smoke-free while it is being used for any research or tests if it:
- a. has been designated by the person in charge of the laboratory in which the room is situated as being a room in which smoking is permitted for research or tests specified in paragraph 3.16 and is a room for the use only of the persons who are required to supervise or participate in the research or tests;
 - b. has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
 - c. does not have a ventilation system that ventilates into any other smoke-free part of the premises or other premises (except any other designated rooms);
 - d. does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
 - e. is clearly marked on each entrance door as a room in which smoking is permitted.

Ministry of Defence

- 3.17 The draft Order and the Smoking, Health and Social Care (Scotland) Act 2005 bind the Crown. The smoking provisions of the Health Act do not. However, the Ministry of Defence (MOD) has given a commitment that it will reflect the spirit of the legislation, as far as possible, in a military context. The Department of Health, the Welsh Assembly Government and the Department of Health, Social Services and Public Safety are currently in discussion with the MOD on the policy to be implemented across Her Majesty’s Forces. Although the proposed draft regulations make no reference to the MOD, it is anticipated that the regulations, when made, will include an exemption for the MOD which will mirror the position in England and Wales.

Notes on exemptions

- 3.18 There is no obligation for persons in control of premises who can rely on exemptions from smoke-free legislation for parts of their premises to allow smoking to take place within them. The proposed regulations have been drafted in a way that recognises that all premises are unique and provide the flexibility for managers to make decisions about whether to implement exemptions, based on factors that will be specific to their premises. Such considerations are likely to include the nature of the client, resident or customer base, the physical layout of their premises and how other legislation (including fire and building regulations and health and safety laws) applies to premises. Important considerations will also include how the health of employees, visitors and (if applicable) residents

will be protected and the availability of and/or access to outside space for smoking.

Notes on specified conditions for premises with designated rooms for smoking

- 3.19 These regulations specify a number of conditions that must be met for the different types of premises included in these proposed regulations to access an exemption from smoke-free legislation (apart from private accommodation). These conditions have been developed to maximise the protection of persons from exposure to hazardous secondhand smoke within premises that have designated smoking rooms. The following paragraphs elaborate on a number of these conditions.

Designation of rooms that are not smoke-free

- 3.20 Where indicated, designated rooms that are not smoke-free must be designated in writing by the person in charge of the premises. Proprietors will be advised to retain the written designation so that it may be made available for inspection by an enforcement officer at any time.

Rooms designated for smoking must be clearly marked as a room in which smoking is permitted

- 3.21 People should know in which rooms they might expect to be exposed to secondhand smoke. Designated rooms are to be clearly marked as rooms in which smoking is permitted. While premises will be free to determine how best to mark designated rooms, signage that meets legislative requirements will be distributed to the business community.

Rooms designated for smoking must not have any door that opens onto smoke-free parts of premises which is not mechanically closed immediately after use

- 3.22 Mechanically closing doors into designated rooms for smoking will assist in preventing drift of secondhand smoke into smoke-free parts of premises.

Designated rooms in accommodation for guests and other residential accommodation

- 3.23 These regulations provide for designated rooms in guest accommodation in premises such as hotels, guest houses, inns, hostels and members' clubs, and in other residential accommodation in specified residential care homes and nursing homes, adult hospices or mental health units. In such premises, designated rooms where smoking may take place are intended only for residents, and if management allows, for the guests of residents. The provisions in the draft Order are for places of work to be smoke-free, so the Department would expect that all employees in such premises be required not to smoke anywhere within the premises.

Designated communal smoking rooms in other residential accommodation and in offshore installations

- 3.24 Under these proposed regulations, any communal smoking room in these premises must be used solely for smoking and must not serve any other purpose.

For example, these regulations would not allow for a communal smoking room in an adult residential care home or nursing home also to be used as a recreation or television room. To do otherwise would run the risk of non-smoking residents spending extended periods of time being exposed to secondhand smoke when engaged in other activities.

Smoke-free vehicles

- 3.25 Article 6 of the Order provides powers for regulations to provide for vehicles to be smoke-free and can specify the description of vehicles and particular circumstances when they are to be smoke-free.
- 3.26 **Private vehicles:** under these proposed regulations, there is no intention to require private vehicles, including rental vehicles for private use, to be smoke-free.

Regulation 9: Enclosed vehicles

- 3.27 Under these proposed regulations, a vehicle is to be smoke-free if it is used:
- for the transport of members of the public or a section of the public (whether or not for reward or hire); or
 - for work by more than one person (even if the persons who work there do so at different times, or only intermittently).
- 3.28 **Public transport:** it is intended that any vehicle used for transportation of members of the public will be smoke-free at all times. This will provide them with the reassurance that all public transport will be smoke-free, regardless of when or where they use it in Northern Ireland. Public transport in Northern Ireland is already largely smoke-free through existing regulations and bye-laws. The proposed regulations bring together existing legislative controls on smoking in public service vehicles.
- 3.29 **Work Vehicles:** it is proposed that vehicles used as a place of work by more than one person, regardless of whether they are in the vehicle at the same time, will be smoke-free at all times. This would be applicable to any vehicle used for work, regardless of whether it was a heavy goods vehicle, a delivery van or a farming vehicle, on the basis that the vehicle was enclosed. This protects shift and other workers who use the same vehicle from the health risks associated with secondhand smoke and provides consistency with other non-mobile workplaces.
- 3.30 Under these regulations, smoking will be permitted in vehicles that are for the sole use of the driver and are not used as a workplace by anyone else, either as a driver or passenger. This is consistent with provisions for places of work that are premises in Article 3(2)(a).
- 3.31 **Water-borne craft:** the draft Order does not extend to water-borne craft for which regulations could be made under section 85 of the Merchant Shipping Act 1995 (c.21). This is because smoke-free regulations for those craft will be made by the Secretary of State for Transport under that Act. Any water-borne craft, including hovercraft, not covered by the Merchant Shipping Act 1995 would be covered by the provisions of the draft Order if they are used for public transportation or workplaces as specified above.

- 3.32 **Aircraft:** Smoking in aircraft is prohibited under the provisions of the Air Navigation Order 2005 and the Government is satisfied that this legislation is effective.

Only the vehicles, or parts of vehicles, specified above which **are enclosed** will be required to be smoke-free. Under these proposed regulations, a vehicle is only to be smoke-free when it is wholly enclosed or partly covered by a roof. This means that a convertible car would only be required to be smoke-free when the top of the car is partly or wholly in place.

Additional smoke-free places

- 3.33 The Department does not propose at present to use the regulation making powers set out in Article 5 of the draft Order to specify any additional places to be smoke-free.

Regulation 10: Penalties and discounted amounts

- 3.34 Article 7(8) of the draft Order provides that a person who is found guilty of the offence of failing to display a no-smoking sign in a no-smoking premise or vehicle will be liable on summary conviction to a fine not exceeding level 3 (£1,000) on the standard scale. Article 8(5) of the draft Order provides that a person guilty of an offence of smoking in a smoke-free place or vehicle will be liable on summary conviction to a fine not exceeding level 3 (£1,000) on the standard scale.
- 3.35 Article 10 of the draft Order provides for an authorised officer of a district council, who has reason to believe that an offence has been committed under Article 7(5) (failure to display a no-smoking sign in a no-smoking premise or vehicle), and 8(2) (smoking in a smoke-free place or vehicle) may, as an alternative, give a penalty notice in respect of the offence.
- 3.36 **No-smoking sign offence:** it is proposed that the amount of the penalty for a no-smoking sign offence will be £200, while the discounted amount if the penalty is paid within 15 days of issue is proposed to be £150. If an individual who is issued with a penalty notice pays within 29 days of when the notice is given, no further action will be taken in respect of the alleged offence. The payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction.
- 3.37 **Offence of smoking in a smoke-free place:** it is proposed that the amount of the penalty for smoking in a smoke-free place will be £50, while the discounted amount if the penalty is paid within 15 days of issue is proposed to be £30. If an individual who is issued with a penalty notice pays within 29 days of when the notice is given, no further action will be taken in respect of the alleged offence. The payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction.

Performers

- 3.38 The proposed regulations make no reference to performers. However it is the Department's intention to bring forward regulations at a later date. These will set out that where the artistic integrity of a performance makes it appropriate for a person who is taking part in that performance to smoke, the part of the premises in which that person performs is not smoke-free only during the performance. It is intended that this proposed provision will be self-regulating. However, there are responsibilities under the draft Order on the person who controls or is concerned in the management of premises in which a person performs to ensure that persons do not smoke unlawfully.

STATUTORY RULES OF NORTHERN IRELAND

2007 No.

PUBLIC HEALTH

The Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007

Made

*To be laid before Parliament under
Paragraph 7(3) of the Schedule to the
Northern Ireland Act 2000.*

Coming into operation

The Department of Health, Social Services and Public Safety(a), makes the following regulations in exercise of the powers conferred by Articles 4(1), 6(1), 10 (3), 15(1) and paragraphs 5 and 8 of Schedule 1 to the Smoking (Northern Ireland) Order 2006(b).

Part 1

General

Citation, commencement and interpretation

1.(1) These Regulations may be cited as the Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007 and shall come into operation on 2007.

(2) In these Regulations-

“designated” means designated in writing by the person in charge of premises;

“offshore installation” has the same meaning as in Article 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations (Northern Ireland) 1995(c);

(a) See S.I. 1999/283 (N.I.1), Article 3(6)

(b) S.I. 2006/ (N.I.)

(c) S.R. 1995 No. 340

“the Order” means the Smoking (Northern Ireland) Order 2006.

(3) The exemptions in Part 2 apply only to premises that would be smoke-free under Article 3 of the Order if those exemptions had not been made.

Part 2

Exemptions

Private Accommodation

2. –(1) A private dwelling is not smoke-free except for any part of it which is –

- (a) shared with other premises (including any other private dwelling or dwellings); or
- (b) used solely as a place of work (other than work that is excluded by paragraph (2)) by –
 - (i) more than one person who does not live in the dwelling;
 - (ii) a person who does not live in the dwelling and any person who does live in the dwelling; or
 - (iii) a person (whether he lives in the dwelling or not) who in the course of his work invites persons who do not live or work in the dwelling to attend the part of it which is used solely for work.

(2) There is excluded from paragraph (1)(b) all work that is undertaken solely -

- (a) to provide personal care for a person living in the dwelling;
- (b) to assist with the domestic work of the household in the dwelling;
- (c) to maintain the structure or fabric of the dwelling; or
- (d) to install, maintain or remove any service provided to the dwelling for the benefit of persons living in it.

(3) In this regulation, “private dwelling” includes self-contained residential accommodation for temporary or holiday use and any garage, outhouse or other appurtenance for the exclusive use of persons living in the dwelling.

Accommodation for guests and club members

3.-(1) A designated bedroom in a hotel, guest house, inn, hostel or members' club is not smoke-free.

- (2) In this regulation "a designated bedroom" means a room which –
 - (a) is set apart exclusively for sleeping accommodation;
 - (b) has been designated by the person having the charge of the premises in which the room is situated as being a room in which smoking is permitted;
 - (c) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
 - (d) does not have a ventilation system that ventilates into any other part of the premises (except any other designated bedrooms);
 - (e) does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
 - (f) is clearly marked as a bedroom in which smoking is permitted.
- (3) In this regulation "bedroom" does not include any dormitory or other room that a person in charge of premises makes available under separate arrangements for persons to share at the same time.

Other residential accommodation

4.-(1) A designated room that is used as accommodation for persons aged not less than 18 years in the premises specified in paragraph (2) is not smoke-free.

- (2) The specified premises are –
 - (a) residential care homes and nursing homes as defined in Articles 10 and 11 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(a)
 - (b) hospices which as their whole or main purpose provide palliative care for persons resident there who are suffering from progressive disease in its final stages; and
 - (c) mental health units that provide long-term residential accommodation.

(a) S.I. 2003/431 (N.I.9)

(3) In this regulation –

“designated room” means a bedroom or a room used only for smoking which –

- (a) has been designated by the person having charge of the premises in which the room is situated as being a room in which smoking is permitted;
- (b) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
- (c) does not have a ventilation system that ventilates into any other part of the premises (except any other designated smoking rooms);
- (d) does not have any door that opens on to smoke-free premises which is not mechanically closed immediately after use; and
- (e) is clearly marked as a room in which smoking is permitted;

“hospice” means an independent hospital as defined in Article 2(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

“long-term” in relation to residential accommodation in a mental health unit means accommodation which, in the normal course of events, is provided for patients to occupy for not less than 6 months; and

“mental health unit” means any establishment (or part of an establishment) maintained wholly or mainly for the reception and treatment of persons suffering from any form of mental disorder as defined in Article 3(1) of the Mental Health (Northern Ireland) Order 1986.(a)

Prisons

5.-(1) A prison is not smoke-free.

(2) In this regulation “prison” has the same meaning as in section 47(1A) and (2) of the Prison Act (Northern Ireland) 1953(b)

(a) S.I. 1986/595 (N.I.4)

(b) 1953 (c.18) Section 47 was amended by Article 14(1) and paragraphs 9 and 10 of Schedule 1 and Article 14(2) and Schedule 2 to the Treatment of Offenders (Northern Ireland) Order 1989 S.I. 1989/1344 (N.I.15) and paragraph 1 of Schedule 5 to the Criminal Justice (Children) (Northern Ireland) Order 1998 S.I. 1998/1504 (N.I.9)

Specialist tobacconists

6.-(1) The shop of a specialist tobacconist that is being used by persons who are sampling products for smoking other than cigarettes or rolling tobacco is not smoke-free for the duration of that sampling if it –

- (a) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
- (b) does not have a ventilation system that ventilates into any smoke-free premises;
- (c) does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
- (d) is clearly marked as premises in which smoking is permitted.

(2) In this regulation “specialist tobacconist” has the same meaning as in section 6(2) of the Tobacco Advertising and Promotion Act 2002 **(a)**

Offshore installations

7.-(1) A designated room in an offshore installation is not smoke-free.

(2) In this regulation a “designated room” means a room used only for smoking which –

- (a) has been designated by the person in charge of the installation in which the room is situated as being a room in which smoking is permitted;
- (b) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
- (c) does not have a ventilation system that ventilates into any other part of the premises (except any other designated rooms);
- (d) does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
- (e) is clearly marked as a room in which smoking is permitted.

(a) 2002. C.36.

Research and testing facilities

8.-(1) A designated room in a research or testing facility is not smoke-free whilst it is being used for any research or tests specified in paragraph (2).

- (2) The research or tests that are specified are those that relate to –
- (a) emissions from tobacco and other products used for smoking;
 - (b) development of products for smoking with lower fire hazard or the fire safety testing of materials involving products for smoking;
 - (c) development of smoking or pharmaceutical products that could result in the manufacture of less dangerous products for smoking; or
 - (d) smoking cessation programmes.
- (3) In this regulation a “designated room” means a room which –
- (a) has been designated by the person in charge of the research and testing facility in which the room is situated as being a room in which smoking is permitted for research or tests specified in paragraph (2) and is a room for the use only of the persons who are required to supervise or participate in the research, tests or treatment;
 - (b) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
 - (c) does not have a ventilation system that ventilates into any other part of the premises or other premises (except any other designated rooms);
 - (d) does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
 - (e) is clearly marked on each entrance door as a room in which smoking is permitted.

Part 3

Vehicles

Enclosed vehicles

9.-(1) Subject to the following paragraphs of this regulation, a vehicle shall be smoke-free if it is used –

- (a) for the transport of members of the public or a section of the public (whether or not for reward or hire); or
 - (b) for work by more than one person (even if the persons who work there do so at different times, or only intermittently).
- (2) This regulation applies to vehicles and parts of vehicles which are enclosed.
- (3) A vehicle or part of a vehicle is enclosed for the purposes of paragraph (2) where it has doors or windows that may be opened but it is not enclosed unless it is wholly or partly covered by a roof.
- (4) In this regulation “roof” does not include any roof that is completely stowed away so that it does not cover any part of a compartment in which persons may travel.

Part 4

Penalties

Penalties and discounted amounts

- 10.** –(1) In respect of an offence alleged under Article 7 of the Order-
- (a) the amount of the penalty specified for the purposes of paragraph 5 of Schedule 1 to the Order is £200;
 - (b) the discounted amount specified for the purposes of paragraph 8 of Schedule 1 to the Order is £150.
- (2) In respect of an offence alleged under Article 8 of the Order-
- (a) the amount of the penalty specified for the purposes of paragraphs 5 of Schedule 1 to the Order is £50;
 - (b) the discounted amount specified for the purposes of paragraph 8 of Schedule 1 to the Order is £30.

Sealed with the Official Seal of the Department of Health, Social
Services and Public Safety on 2007

(L.S)

A senior officer of the Department
of Health, Social Services and Public Safety

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make further provision under the Smoking (Northern Ireland) Order 2006 in relation to the prohibition of smoking in certain enclosed or substantially enclosed premises.

Regulations 2, 3, 4, 5, 6, and 7 specify circumstances and conditions under which certain premises or areas of premises are not smoke-free.

Regulation 8 makes provision for a designated room in a facility used for specified research or testing purpose not to be smoke-free while it is being so used.

Regulation 9 makes provision for descriptions of vehicles and the circumstances in which such vehicles are to be smoke-free.

Regulation 10 specifies the amount of fixed penalties under paragraph 5 of, and discounted amounts under paragraph 8 of Schedule 1 to the Order for Offences under Article 7 (£200 and £150) and Article 8 (£50 and £30).