

EXPLANATORY MEMORANDUM TO
THE SMOKE-FREE (PRIVATE VEHICLES) REGULATIONS 2015

2015 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These Regulations extend the existing smokefree legislation by setting out the circumstances when private vehicles are smokefree and go on to:
 - allow the use of fixed penalty notices (FPNs) for offences in smokefree private vehicles,
 - designate the police as an enforcement authority for these measures, and
 - set a statutory review of the regulations within 5 years of their coming into force,in order to protect children from the harms of secondhand smoke in private vehicles.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 Section 95 of the Children and Families Act 2014 amended the Health Act 2006 to give the Secretary of State regulation-making powers to make private vehicles smokefree places when carrying children under the age of 18.
 - 4.2 The existing smokefree legislation makes enclosed public and work premises, and enclosed public and work vehicles, smokefree. There are two relevant offences: smoking in a smokefree place¹ or failing to prevent smoking in a smokefree place.² Under current legislation, enforcement officers can issue an FPN to someone smoking in a smokefree place or the matter could go for summary trial but there is no provision for an FPN for the offence of failing to prevent smoking and anyone accused of committing that offence would go to court.

¹ Section 7 of the Health Act 2006

² Section 8 of the Health Act 2006

4.3 Local authorities are currently designated as the enforcement authorities for the smoke-free legislation.³ In addition, these Regulations designate police forces as enforcement authorities for smokefree private vehicles.

4.4 Current legislation requires a no-smoking sign to be displayed in all smokefree places (premises and vehicles).⁴ These regulations exclude smokefree private vehicles from this requirement.

4.5 There will be a separate SI (subject to negative resolution) to amend the FPN form itself to allow the form to be used for both offences for smokefree private vehicles. A draft of this SI is attached at Annex A for information. That instrument will be made after the affirmative SI is made.

5. Territorial Extent and Application

5.1 Smokefree legislation is a devolved matter and these regulations apply to England only. However, regulation 5, which sets the amount of the fixed penalty notice at £50 for the offence of failing to prevent smoking in a smoke free private vehicle, applies in relation to England and Wales. The power to make this provision lies with the Secretary of State rather than with the national authority.

5.2 Wales are in the process of making similar regulations and officials are liaising with the Welsh Government on timing. Therefore the application of this provision for Wales will be necessary on the same time frame.

6. European Convention on Human Rights

The Secretary of State for Health has made the following statement regarding Human Rights:

In my view the provisions of the Smoke-free (Private Vehicles) Regulations 2015 are compatible with the Convention rights.

7. Policy background

Harms of secondhand smoke

7.1 Secondhand smoke is a serious health hazard, and there is no safe level of exposure. Every time someone breathes in secondhand smoke, they breathe in over 4,000 chemicals. Many are highly toxic. More than 50 are known to cause cancer.

7.2 Secondhand smoke is a real and substantial threat to child health, causing a variety of adverse health effects including increased susceptibility to lower

³ Regulation 3 of the Smoke-free (Premises and Enforcement) Regulations 2006.

⁴ The Smoke-free (Signs) Regulations 2012, available here <http://www.legislation.gov.uk/ukxi/2012/1536/made>

respiratory tract infections such as pneumonia and bronchitis, worsening of asthma, middle ear disease, decreased lung function and sudden infant death syndrome. We also know that children are more vulnerable to secondhand smoke exposure in vehicles as they breathe more rapidly and inhale more pollutants than adults.

7.3 Scientific evidence also shows that ventilation does not eliminate the risks to health of secondhand smoke in enclosed places. The only way to provide effective protection is to prevent people breathing in secondhand smoke in the first place.⁵

7.4 In 2007, smokefree legislation was introduced in England and Wales to protect employees and the public from the harmful effects of secondhand smoke in public and work premises and vehicles. This legislation does not extend to private vehicles.

Exposure to secondhand smoke in vehicles

7.5 A significant number of children say that they are exposed to secondhand smoke in private vehicles. In 2012, 26% of 11-15 year olds reported being exposed to secondhand smoke in their family's car and 30% in someone else's car.⁶

7.6 Research shows that smoking in vehicles can result in build-up of high levels of secondhand smoke, which can persist even when windows are open or the ventilation system is in use.⁷ Some public health groups have reported concern about the intensity of exposure to secondhand smoke in private vehicles, even if the duration of exposure may not be lengthy.

7.7 Many children feel unable to ask someone to stop smoking when travelling in a car. Statistics show that 86% of children who are exposed to secondhand smoke in cars would like the smokers to stop, 31% actually feel able to tell their parents to stop.⁸ The threat to child health, numbers of children exposed and the fact that they are less able to refuse to travel in a vehicle than adults are key reasons for introducing this measure.

⁵ HM Government (2007). *Everything you need to prepare for the new smokefree law on 1 July 2007*. Smokefree England and Department of Health, London.

⁶ Health and Social Care Information Centre. *Smoking, Drinking and Drug Use Among Young People in England, 2012*. Health and Social Care Information Centre, Leeds.

⁷ Semple, S. et al (2012). "Secondhand smoke in cars: assessing children's potential exposure during typical journey conditions" in *Tobacco Control*. 2012;21(6), pp.578-83.

⁸ Protect children from second-hand smoke: Smoke-free Private Vehicles Amendment, Children and Families Bill: briefing for MPs, *British Lung Foundation*, (<http://www.google.co.uk/url?url=http://www.blf.org.uk/parliamentary-feb-14-pdf&rct=j&frm=1&q=&esrc=s&sa=U&ei=nFmgU8bNFK3Y7Abym4GwBA&ved=0CBkQFjAB&sig2=9nIVHNNdSsTzRi3LpkDfow&usg=AFQjCNF5F19mm7O0XA\FUS63uvPO9iB8ag>)

Parliamentary support

7.8 Parliament has debated this issue on a number of occasions and there is continued interest from public health organisations in this policy. Alex Cunningham MP (in June 2011) and Lord Ribeiro (in May 2012) introduced Private Members' Bills seeking to bring in similar provisions. Amendments made during the passage of the Children and Families Bill introduced the relevant regulation-making powers.

Detail of the regulations

7.9 The aims of these Regulations are to:

- Protect children from the health harms associated with exposure to secondhand smoke in private vehicles;
- Encourage action by smokers to protect children from secondhand smoke; and
- In time, lead to a reduction in health conditions in children caused by exposure to secondhand smoke.

7.10 Under the Health Act 2006, a smokefree place is somewhere where smoking is not permitted. These Regulations amend the Smoke-free (Exemptions and Vehicles) Regulations 2007⁹ and designate all road vehicles that are not already covered by existing smokefree legislation as smokefree places, when a person under 18 is present in the vehicle. A private vehicle will become a smokefree place when:

- it is enclosed,
- more than one person is present and
- a person under age 18 is present.

As with the existing smokefree legislation, these Regulations do not apply to ships, hovercraft and aircraft as they are covered under different legislation.

7.11 It will be an offence:

- to smoke in a private vehicle with someone under age 18 present; and
- if you are the driver, to fail to prevent smoking in a private vehicle with someone under age 18 present.

7.12 It will not be an offence for an underage person to smoke if they are alone in a vehicle because of the requirement for there to be more than one person present for a private vehicle to be smokefree. So, for instance, a car with a 17 year old driver on their own does not become a smokefree place. But if there is another person in the car, whether under 18 or over, the vehicle is smokefree. If the additional person is under 18, then it is important that they are protected by the legislation. If the additional person is over 18 then it is important that it is an offence for the adult to smoke.

⁹ The regulations are available here <http://www.legislation.gov.uk/ukxi/2007/765/contents/made>

7.13 The regulations do not apply to motorhomes or campervans (motor caravans) and caravans when they are being used as a home. This is because the policy aim is for the regulations to apply to vehicles and not homes.

7.14 In order to make sure that the penalties for both offences are proportionate, these regulations introduce an FPN for the offence of failing to prevent someone smoking in a private vehicle. In relation to existing smokefree places this offence can only be dealt with in court with a maximum level four fine on summary conviction. This is because the ‘failing to prevent’ offence falls to the owner or manager of a business, or the driver of a public or work vehicle. Someone in this position has responsibilities to the public or their employees and a breach of such a responsibility is seen as too serious to be dealt with by a FPN. However, in the case of a private vehicle, it is more proportionate to have an FPN available for both offences.¹⁰

7.15 Anyone who smokes in a smokefree private vehicle with children present would be guilty of an offence regardless of their age (consistent with existing smokefree legislation). The offence of failing to prevent smoking would apply to the driver of the vehicle in all instances, including provisional licence holders. Therefore a driver who is smoking in a smokefree private vehicle with children present will be committing both offences and could be issued with two FPNs. The FPN will be £50 for both offences.

7.16 Local authorities enforce the existing smokefree laws. These Regulations add police forces as enforcement authorities for smokefree private vehicles because, unlike local authorities, they are able to request that a vehicle stops if they suspect that an offence is being committed.¹¹ Local authorities would also be able to enforce the proposed regulations and there will be an important role for local authority regulatory officers in working jointly with police on local enforcement activities, as well as continuing their efforts to build compliance for smokefree legislation generally.

7.17 Enforcement bodies will use their discretion in deciding whether to issue warnings, fixed penalty notices or whether to refer an alleged offence directly to court.

7.18 In addition to guidance, the Department of Health and Public Health England will continue to protect children from the harms from exposure to secondhand smoke by encouraging voluntary action. This means encouraging positive behaviour change among smokers through social marketing campaigns that will help build awareness.

7.19 The regulations will come into force on 1 October 2015.

¹⁰ The regulations amend the Smoke-free (Penalties and Discounted Amounts) Regulations 2007, available here <http://www.legislation.gov.uk/uksi/2007/764/contents/made>

¹¹ The regulations amend the Smoke-free (Premises and Enforcement) Regulations 2006 available here <http://www.legislation.gov.uk/uksi/2006/3368/contents/made>

8. Consultation outcome

8.1 On 15 July 2014, the Department of Health launched a six-week public consultation on draft regulations to end smoking in a private vehicle carrying children.

8.2 There were 201 responses to the consultation in total, with the majority of those coming from organisations including health organisations and local authorities.

8.3 The consultation did not directly ask if respondents supported the policy but it was possible to determine respondent's general views in many cases - 78% supported the draft regulations, 15% did not and the remaining 7% of responses were unclear. Many health or social care professionals and organisations were in favour of the legislation. The businesses who responded did not support the legislation and members of the public were divided on the issue (48% in favour, 43% against and 10% unclear). There was general agreement among all respondents that reducing children's exposure to secondhand smoke is important, even from those who strongly disagree with legislating in this area.

8.4 Three main areas for further policy consideration emerged during the consultation:

- The age at which the laws apply
- A statutory review of the regulations
- Definitions in relation to caravans and motor caravans

8.5 With regard to the comments about age-related issues which arose in the consultation, the current smokefree laws mean that people of any age (including those under age 18) are committing an offence if they smoke in other smokefree places such as on a bus or in a restaurant. These regulations will be part of the current smokefree laws and so must be consistent with them.

8.6 The Government agrees it is important to evaluate these Regulations to consider their effectiveness. The regulations have been amended to include a requirement to review the regulations within five years of them coming into force.

8.7 Following the consultation, the exemption relating to motorhomes and caravans has been strengthened to include them when they are stationary and *on the road* but are being used as living accommodation. The main objective in doing this is to make sure that any children travelling in such vehicles are protected from secondhand smoke whilst not discriminating against those in the Gypsy and Traveller communities who use these vehicles as homes in a variety of locations.

8.8 Responses also helpfully suggested areas in which more information would assist people in complying with the regulations as well as enforcement authorities when implementing the regulations. These suggestions have been

taken into account and will be considered when developing the guidance and providing further information to the public. The Government response to the consultation is available on the DH web page.¹²

9. Guidance

9.1 Guidance will be made available for enforcement officers, which will be developed with relevant bodies responsible for training enforcement officers.

9.2 There were many suggestions for areas for guidance which came out of the consultation including

- How to assess whether someone was smoking in a moving vehicle
- Whether it would be possible to see a child in a vehicle or know whether a baby seat was being used
- How to differentiate between a tobacco cigarette and an electronic device
- How to identify if someone is under the age of 18

which are helpful in identifying aspects to be covered in guidance.

9.3 Officials will work with Public Health England to develop a public marketing campaign for the legislation before it comes into force in October 2015 to increase awareness of the new laws.

10. Impact

10.1 The Government has not identified any impact on business, charities or voluntary bodies. An Impact Assessment (IA) is attached to this memorandum at Annex B and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

10.2 The impact on the public sector falls on the police and the justice system. There will be costs for enforcing the regulations: costs of issuing the FPN (£18.26) and administrative costs (£6) for each FPM which equates to an estimated total cost of approximately £416k, discounted over ten years. There are also costs to the justice system for prosecutions in the courts which amount to an estimated cost to the justice system of £350,000. These figures have been tested and agreed with the Home Office and are based on another IA. Further detail can be found in the IA at Annex B.

10.3 An Equality Analysis was completed in accordance with the Secretary of State's Equality Duty and published alongside the Government response.

¹² <https://www.gov.uk/government/consultations/proposals-to-make-private-vehicles-smokefree-when-carrying-children>

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 The Government monitors tobacco legislation on an ongoing basis. Officials will talk to enforcement authorities as the legislation comes into force to see how enforcement is working and a formal requirement to review within 5 years has been included in the regulations.

13. Contact

Jeremy Mean at the Department of Health Tel: 020 7972 4495 or email: jeremy.mean@dh.gsi.gov.uk can answer any queries regarding the instrument.