

**EXPLANATORY MEMORANDUM TO**  
**THE SMOKE-FREE (VEHICLE OPERATORS AND PENALTY NOTICES)**  
**(AMENDMENT) REGULATIONS 2015**

**2015 No. 939**

1. This explanatory memorandum has been prepared by the Department of Health (DH) and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 The Smoke-free (Private Vehicles) Regulations 2015 No.286 (S.I. 2015/286) require private vehicles in England to be smokefree where they are enclosed, there is more than one person present, and one of those present is under the age of 18. They also place a duty on the driver of such a vehicle to stop a person smoking in that vehicle. These regulations complete the enforcement regime by setting out the Fixed Penalty Notice (FPN) form to be issued to any driver who commits such an offence.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 Smokefree legislation in the Health Act 2006 has been extended to cover private vehicles carrying those under the age of 18, making such vehicles smokefree. This is explained in the Explanatory Memorandum for S.I. 2015/286 (available here along with the regulations and accompanying documentation: <http://www.legislation.gov.uk/uksi/2015/286/contents/made>).
  - 4.2 S.I. 2015/286 has been approved by both Houses of Parliament, and as with these regulations will come into force on 1 October 2015.
  - 4.3 There are two offences: smoking in a smokefree place,<sup>1</sup> and failing to prevent smoking in a smokefree place.<sup>2</sup>
  - 4.4 The Health Act 2006 provides that an FPN can be issued to someone smoking in a smokefree place. This means they can pay a fine as an alternative to prosecution.
  - 4.5 The Health Act does not provide for an FPN to be issued for the offence of failing to prevent smoking in a smokefree place, who would be the driver in the case of private vehicles carrying under 18s. It is more

---

<sup>1</sup> Section 7 of the Health Act 2006

<sup>2</sup> Section 8 of the Health Act 2006

proportionate to have an FPN available for this offence so SI 2015/286 introduced provisions to allow and FPN to be issued in such cases.

4.6 Schedule 1 (4) of the Health Act requires that a penalty notice must be in a form specified in regulations made by the appropriate national authority. The FPN appropriate to the offence of smoking in a smokefree place is set out within schedule 2 of S.I. 2007/760. These regulations amend that form to include the offence of failing to prevent a person smoking in a vehicle which is smokefree by virtue of S.I. 2015/286.

## **5. Territorial Extent and Application**

5.1 Smokefree legislation is a devolved matter and these regulations apply to England only.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### Harms of secondhand smoke

7.1 As set out in the Explanatory Memorandum that supported S.I. 2015/286, secondhand smoke is a real and substantial threat to child health, causing a variety of adverse health effects including increased susceptibility to lower 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.

7.2 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.<sup>3</sup> 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.<sup>4</sup>

7.3 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

---

<sup>3</sup> 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.

<sup>4</sup> HM Government (2007). *Everything you need to prepare for the new smokefree law on 1 July 2007*. Smokefree England and Department of Health, London.

someone else's car.<sup>5</sup> This is why the Government introduced legislation to end smoking in an enclosed private vehicle carrying a person under the age of 18.

### The regulations

7.4 S.I. 2015/286 place a duty on a driver of a private vehicle in which a person under the age of 18 is present, to stop a person smoking in that vehicle.

7.5 These Regulations amend the existing FPN form set out in S.I. 2007/760 allowing it to be used to enforce the offence of failing to prevent smoking in an enclosed private vehicle as set out in S.I. 2015/286, in addition to the offence of smoking in a smokefree place.

7.6 The amended FPN will only relate to section 8 offences for failing to prevent smoking in private vehicles carrying children. Offences for failing to prevent smoking in a public place, public vehicles and work vehicles, as set out in the original smokefree legislation, will still be dealt with by the courts.

7.7 Current smokefree legislation is enforced by Environmental Health Officers (EHOs). Enforcement officers will use their discretion in deciding whether to issue warnings, fixed penalty notices or whether to refer an alleged offence directly to court.

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

## **8. Consultation outcome**

8.1 The Government consulted on S.I. 2015/286 between 15 July and 27 August 2014. The Government response to the consultation outlines the changes made to the draft regulations and is available on the DH web page.<sup>6</sup>

8.2 The consultation document advised that arrangements for the specifics surrounding the FPNs would be determined at a later date. As S.I. 2015/286 has now completed its passage through Parliament, we need to make the required changes to the FPN form. We discussed the format of the FPN with the Chartered Institute of Environmental Health who have expertise in this area. Their advice was that it was simplest for enforcement officers to have one form that covered both offences.

## **9. Guidance**

9.1 Guidance will be made available for enforcement officers for S.I. 2015/286, which will be developed with relevant bodies responsible for training enforcement officers.

---

<sup>5</sup> Health and Social Care Information Centre. *Smoking, Drinking and Drug Use Among Young People in England, 2012*. Health and Social Care Information Centre, Leeds.

<sup>6</sup> <https://www.gov.uk/government/consultations/proposals-to-make-private-vehicles-smokefree-when-carrying-children>

9.2 It will include information on the FPN form including that the FPN cannot be used for enforcement of failing to prevent smoking in any other spaces apart from a private vehicle.

## **10. Impact**

10.1 An impact assessment was completed for S.I. 2015/286 and the Government did not identify any impact on business, charities or voluntary bodies.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **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 is included in S.I. 2015/286.

12.2 As with the existing smokefree regulations, we will not measure the success of the proposed regulations by the number of enforcement actions that are taken, but rather by how behaviour, attitudes and health outcomes change in time.

## **13. Contact**

Andrew Black at the Department of Health Tel: 020 7972 4843 or email: [Andrew.black@dh.gsi.gov.uk](mailto:Andrew.black@dh.gsi.gov.uk) can answer any queries regarding the instrument.