



Implementation of **smoke-free legislation** in England

The Smoke-free (Private Vehicles) Regulations 2015



Guidance for enforcement officers and the public on the prohibition on smoking in private vehicles carrying children



Poppy, Year 3

Kippax Ash Tree Primary School,
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In offering this advice it must be clearly understood that:

- legislation may change over time and the advice given is based on the information available at the time the guidance was produced – it is not necessarily comprehensive and is subject to revision in the light of further information;
- only the courts can interpret statutory legislation with any authority; and
- this guidance is provided as advice only and authorities should seek their own legal advice where appropriate.

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1 Purpose of the guidance

From 1st October 2015 the existing smokefree law, which makes public places and work premises and vehicles smokefree, is being extended. The Smoke-free (Private Vehicles) Regulations 2015 will require all private vehicles to be smokefree when they are enclosed, contain more than one person and a person under 18 is present in the vehicle. So it will be an offence:

- for someone to smoke in a private vehicle with someone under age 18 present; and
- for a driver not to stop someone smoking.

Note: Electronic cigarettes and all forms of nicotine vaporisers are not included within the definition of smoking.

The purpose is to protect children from the harm to their health caused by exposure to secondhand smoke in vehicles.

It has been clearly demonstrated that smokefree legislation has been a major public health success story. It has been popular with the public, is easily complied with and is effectively achieving its objectives. Popular public support when the law was introduced in 2007 meant that very high compliance levels were quickly achieved¹. The health gains include: 1200 fewer emergency admissions to hospital for heart attacks² (a reduction of 2.4%) in the first year following implementation; reduced incidence of childhood asthma³; and an increase in the number of people cutting down or quitting smoking⁴.

With all legislation there is always the opportunity for local interpretation and for adjusting requirements according to local circumstances. The aim of this guidance is to ensure a consistent

approach to the application of the legislation so that children travelling in private vehicles across England are properly protected from secondhand smoke and drivers and adult users of private vehicles are treated fairly.

The Chartered Institute of Environmental Health (CIEH) in consultation with the Department of Health, have developed this guidance to help enforcement officers to use the new requirements to best effect and to help members of the public to comply with the law by not smoking where it is prohibited by the smokefree laws applying to vehicles. For that purpose information is included in the appendices (6, 7 and 8) on how to make use of no-smoking signs, what to do if someone tries to smoke in your vehicle and some tips to keep your car smokefree.

This guidance will also be of use to local Directors of Public Health and Tobacco Control Alliances in deciding on local policies and planning arrangements to inform the public and support compliance.

This guidance is intended to be used in conjunction with previous guidance on implementation of smokefree legislation^{5,6}.

In the light of experience of implementation this guidance may be amended and updated to which end the CIEH welcomes your comments and your suggestions for further clarification and future inclusions.

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It has been clearly demonstrated that smokefree legislation has been a major public health success story. It has been popular with the public, is easily complied with and is effectively achieving its objectives.



No SMOKING



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2 Background to the legislation

Existing measures

The smokefree laws in force in England since 2007 are ensuring that children are fully protected from the harms of secondhand smoke when using public transport and when travelling in public service and work vehicles. However, there are no restrictions on smoking in private vehicles except when they are used primarily in connection with work activities, in which case they are then required to be smokefree at all times even when in use for private purposes.

Protecting children's health

The evidence of damage to children's health from exposure to secondhand smoke is clear and extensive⁷. The Government's independent Scientific Committee on Tobacco and Health (SCOTH) reported that smoking in the presence of children is a cause a variety of adverse health effects⁸. These include increased susceptibility to lower respiratory tract infections such as pneumonia and bronchitis, worsening of asthma, middle ear disease, and decreased lung function.

There is no 'safe' level of exposure to secondhand smoke⁹ and in confined areas such as cars and other motor vehicles, it is known to be hazardous to health and especially for children's health¹⁰. Surveys suggest that more than 430,000 children are exposed to secondhand smoke in the family car each week¹¹.

Opening the car windows or using the car fan or even its air-conditioning is not enough to stop the harmful effects of smoke on children^{12,13,14}. The only way to provide effective protection is to prevent exposure to secondhand smoke in the first place and that means stopping people from smoking in vehicles when children are present.

Need for additional measures

As with the case for prohibiting smoking in enclosed workplaces and public places, there is strong evidence to support extending the prohibition on smoking to cars carrying children¹⁵.

The evidence clearly shows that:

1. Children with a smaller lung capacity and body weight are more adversely affected by nicotine and the airborne particulates in tobacco smoke than adults
2. Smoking in a vehicle can generate high levels of airborne particulates due to the small volume of air in the vehicle and also the potential for it to be recycled without cleaning
3. The mechanisms commonly used in efforts to allow secondhand smoke to escape from vehicles (opening windows and sunroofs) are not effective, since the positive air pressure outside the vehicle causes the tobacco smoke-laden air to remain within the vehicle
4. The level of airborne particulates in a vehicle remains elevated long after a cigarette has been extinguished, and may not return to pre-cigarette level for several hours¹⁶.

It is also the case that children being carried as passengers in a car cannot remove themselves from what is a toxic and health damaging environment since they have no control over the vehicle or the conduct of the driver or passengers.

Jane Ellison MP, the Under Secretary of State for Public Health: "Three million children are exposed to secondhand smoke in cars, putting their health at risk. We know that many of them feel embarrassed or frightened to ask adults to stop smoking which is why the regulations are an important step in protecting children from the harms of secondhand smoke."¹⁷

The Chief Medical Officer, Professor Dame Sally Davies: "Children breathe faster than adults so they are much more exposed to the dangers of secondhand smoke. Their airways, lungs and immune systems are still developing so are much more at risk from harm. We want children to grow up free from harm and we need parents to understand why smoking in vehicles is so dangerous. 80% of smoke is invisible so even if you think you are being careful you cannot see where the smoke is going."¹⁸

From 1st October 2015 the Smoke-free (Private Vehicles) Regulations 2015 will address this by

- prohibiting any person from smoking or having lighted tobacco products in a car or any other vehicle which is enclosed, contains more than one person and a person under 18 is present in the vehicle,

and

- making it an offence for the driver to fail to prevent smoking, in a car or any other private vehicle which is enclosed, contains more than one person and a person under 18 is present in the vehicle.



Smokefree sign reproduced with kind permission of 'Seton'© signs, labels and solutions for a safer workplace.

Opening the car windows or using the car fan or even its air-conditioning is not enough to stop the harmful effects of smoke on children. The only way to provide effective protection is to prevent exposure to secondhand smoke in the first place and that means stopping people from smoking in vehicles when children are present.

3 Overall approach and enforcement policy

Anticipated compliance

The experience in England to date, like that of other countries who have introduced comprehensive smokefree legislation, is that this type of legislation is widely supported by the public, that high rates of voluntary compliance and self-enforcement can be anticipated and that there will therefore be only a minimal need to employ enforcement measures¹⁹.

Therefore, the Department of Health have stated that successful implementation of smokefree legislation will continue to be measured by assessments of how well the requirements of the law are met rather than by the number of enforcement actions taken by the enforcement authorities. In the longer term it will also be possible to measure how behaviour, attitudes and health outcomes change over time.

There has been growing public support for this particular extension of the smokefree requirements to include a prohibition on smoking in private cars when children are present, with support amongst the general public approaching 80%²⁰.

The extensive public awareness campaigns provided by Public Health England, which precede the introduction of this legislation, will support early compliance by building awareness of the requirements through the use of social marketing activities. These and the promotional work of the various tobacco control alliances and campaigning bodies are all likely to increase public approval and acceptance.

Roles and responsibilities

The primary responsibility for detecting and dealing with offences against this legislation is intended to lie with the police. This is because they have existing powers to stop moving vehicles and are able to enforce this legislation as part of their usual road safety responsibilities, which include the proper use of child car seats, seat belts and mobile phones.

Local authorities also have responsibilities and powers to appoint authorised officers to deal with individual offences when discovered or reported to them and to generally support the building of compliance through information and advice campaigns, for example by working with local schools to raise awareness, as well as by working alongside the police in taking targeted enforcement measures.

Enforcement policy

In order to ensure that a fair, proportionate and consistent approach is being taken, authorised officers will need to demonstrate that any enforcement action being taken is in accordance with the principles of their employer's enforcement policy and, in the case of local authority officers, the Regulators' Code²¹.

For this purpose enforcement authorities will need to determine an appropriate enforcement approach for their area. The following text may be useful to form the basis of such an enforcement policy:

'Comprehensive smokefree legislation in England has been in force since 2007 and the expectations of compliance with any new legislation should be high. Nevertheless where non-compliance is due to misunderstandings or a lack of diligence, then further information, advice and guidance can be provided.

'However, where it is evident that serious efforts are not being made to comply, or the attitude is un-cooperative or antagonistic, a decision to take enforcement measures should be considered.

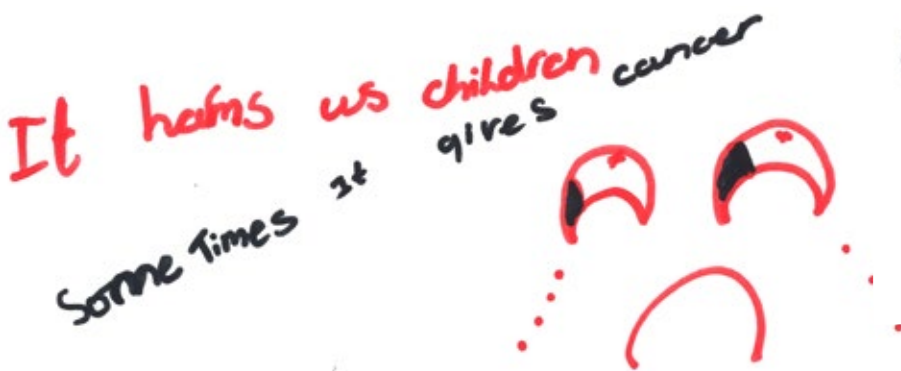
'It is likely that enforcement actions will attract publicity and public attention and it is recommended that each decision on enforcement action should be properly considered and with clear justification. Where a person is determined to flout the law a robust response would be appropriate.'

Stop Smoking Services

The smokefree legislation which came into force in 2007, was primarily aimed at protecting people from secondhand smoke, but also resulted in many more people deciding to stop smoking completely. This new law may also prompt people to stop smoking which will have the benefit, not only of improving the individual's health, but also removing the cause of any non-compliance at source.

To this end, it is recommended that enforcement officers work in partnership with their local public health department tobacco control lead (based in upper tier/unitary local authorities) and the locally commissioned stop smoking services to offer appropriate help and support to smokers. Studies show that smokers are four times more likely to be able to quit with help of stop smoking services²².

In addition, compliance may be enhanced by engaging with local schools to warn parents on the 'school run' that the law prohibits smoking in vehicles when children are present. This could be achieved through communications issued to all schools (local systems are normally in place that can be utilised) with a request that headteachers include announcements and reminders in their newsletters to parents.



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4 Enforcement agencies and authorised officers

Enforcement authorities

The Smoke-free (Premises and Enforcement) Regulations 2006, as amended by Regulation 6 of the Smoke-free (Private Vehicles) Regulations 2015, identifies the following as enforcement authorities for the purpose of Chapter 1 of Part 1 of the Health Act 2006, as amended by section 95 of the Children and Families Act 2014, and thereby responsible for the enforcement of this legislation:

Police authorities

The Chief Officer of each police force.

Local authorities

The following authorities within the areas for which they have responsibility:

- a unitary authority;
- a district council in so far as it is not a unitary authority;
- a London borough council;
- a port health authority;
- the Common Council of the City of London;
- the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple; and
- the Council of the Isles of Scilly.

A local authority enforcement authority has enforcement functions in relation to the vehicles that are within:

- in the case of a port health authority, the district for which it is a port health authority; and
- in the case of other authorities, the area for which it is a local authority other than any part of that area which falls within the district of a port health authority.

Transfer of enforcement functions

The legislation allows that where an investigation is being undertaken by one or more enforcement authorities, the enforcement functions can be transferred from one or more of those enforcement authorities to any of those authorities or any other enforcement authority under arrangements made between the transferring and receiving authorities. An investigation could therefore be started by the police authority or council where the offence took place and then transferred to another police authority or council. Such an arrangement must have the agreement of the receiving authority.

Authorised officer

An authorised officer is any person who is authorised in writing, either generally or specifically, by an enforcement agency to act in matters under Chapter 1 of the Health Act 2006 (as amended by section 95 of the Children and Families Act 2014).

Any authorisation of officers should be made in accordance with normal procedures with the appropriate records retained.

Officers who would be suitable to be authorised include those who are:

- familiar with dealing with enforcement measures in the street environment
- accustomed to speaking to members of the public and serving fixed penalty notices
- able to incorporate this work into their other routine activities.



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Examples include:

Police officers

A police officer in uniform

Local authority officers

Councils will need to identify appropriate local authority officers to carry out duties to secure compliance with this legislation. These may be the same as or additional to those officers already authorised for the enforcement of existing smokefree legislation.

Environmental health officers and trading standards officers

Environmental health officers and trading standards officers are likely to be experienced in carrying out enforcement roles in relation to the general smokefree requirements applying to commercial and work vehicles as well as workplaces and public places.

Street wardens

Street or neighbourhood and community safety wardens²³ wear a uniform and work independently or alongside the police and other local authority officers reducing fear of crime and tackling anti-social behavior including issuing fixed penalty notices for litter, graffiti and dog fouling.

5 Legislative requirements relating to smokefree vehicles

Smoking

The definition of smoking is set out in Section 1(2) of the Health Act 2006:

- (a) “smoking” refers to smoking tobacco or anything which contains tobacco, or smoking any other substance, and
- (b) smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked.

It follows therefore that smoking includes the use of cigarettes, cigars and pipes, including waterpipes (shisha) as well as the use of herbal substances.

Electronic cigarettes and all forms of nicotine vaporisers are not included within the definition of smoking.

Existing requirements

Section 5 of the Health Act 2006 provides power for regulations to require vehicles to be smokefree. A vehicle means every type of vehicle. Regulations exclude aircraft and ships and hovercrafts in respect of which regulations can be made under Section 85 of the Merchant Shipping Act 1995.

Regulation 11 of the Smoke-free (Exemptions and Vehicles) Regulations 2007 provides that an enclosed vehicle shall be smokefree if it is used:

- by members of the public or a section of the public, whether or not for reward or hire; or
- in the course of paid or voluntary work by more than one person, even if the persons who work there do so at different times or only intermittently (“work vehicle”).

This means that children are already fully protected from exposure to secondhand smoke when they are using public transport and travelling in public service and work vehicles.

Private vehicles

In accordance with Regulation 11(5) of the Smoke-free (Exemptions and Vehicles) Regulations 2007 a private vehicle is a vehicle used primarily for the private purposes of a person who:

- owns it; or
- has a right to use it which is not restricted to a particular journey.

Prior to 1st October 2015 there have been no restrictions on smoking in private vehicles except when they are used primarily in connection with work activities, in which case they are then required to be smokefree at all times even when in use for private purposes.





New requirements (from 1st October 2015)

Part 5 of the Children and Families Act 2014 provides for the prohibition on smoking in private vehicles when children under 18 are present.

Section 95 of the Act makes amendments to the Health Act 2006 to allow for regulations 'to provide for a private vehicle to be smokefree where a person under the age of 18 is present in the vehicle'.

The Smoke-free (Private Vehicles) Regulations 2015 amend Regulation 11 of the Smoke-free (Exemptions and Vehicles) Regulations 2007 so as to include, within the meaning of the term smokefree vehicle, the following:

A vehicle, and any part of a vehicle, if it is

- (a) enclosed
- (b) there is more than one person present, and
- (c) a person under the age of 18 is present in the vehicle

Meaning of the term enclosed

A vehicle, or part of a vehicle, is enclosed where it is enclosed wholly or partly by a roof and by any door or window that may be opened. Roof means any fixed or moveable structure or device which is capable of covering all or part of the vehicle, including any canvas, fabric or other covering.

Solo motorcycles and scooters would not normally be included within the above description. However there are two-seater enclosed sidecars as well as so called 'covered scooters' which have provision for a passenger. Similarly there are two-person mobility scooters which may be fitted with fixed and removable roof and side covers (similar to

golf buggies). These multiple seat versions could be considered to be enclosed vehicles.

A vehicle does not need to be smokefree when its roof is removed or completely stowed away so that it does not cover any part of a compartment in which persons are present. A compartment includes each part of the vehicle which:

- is constructed or adapted to accommodate persons; and
- is or may from time to time be wholly or partly covered by a roof.

This means that a convertible car, or coupe, with the roof completely down and stowed, is not enclosed and therefore is not covered by the legislation.

A vehicle is still considered enclosed when doors, windows and sun-roofs are open.

A person is still considered to be smoking in the vehicle when they are holding the cigarette out of the window, and when they are smoking whilst sitting in an open doorway or whilst leaning out of the vehicle.

Caravans and motor caravans

The new smokefree requirements apply to a caravan or motor caravan, but not

- if it is stationary and not on a road, or
- when it is stationary and on a road but is being used as living accommodation.

This is to take account of the fact that caravans and motor caravans when stationary are analogous to rooms in a property, and can be considered to be, and treated the same as being, a person's 'home'. When a motor caravan is being driven on the roads however it is a vehicle and must be smokefree if there is a child under 18



years being carried in it. Passengers should not, of course, be carried in towed caravans at any time.

“Caravan” means a trailer which is designed for road use and provides mobile living accommodation and “motor caravan” means a motor vehicle which is constructed or adapted for the carriage of passengers and their effects and which contains, as permanently installed equipment, the facilities which are reasonably necessary for enabling the vehicle to provide mobile living accommodation for its users.

The term ‘living accommodation’ is not defined, but the everyday meaning would be that the accommodation provided by the caravan or motor caravan was provisioned with food, clothing and bedding and was in use as a shelter together with any facilities for washing, dressing and sleeping. The expectation would be that the facilities were ‘in use’ and not simply available for use and that the purpose of use was over a period of time and not a temporary stop being taken in the course of a journey.

Determining when a caravan or motor caravan is on a road

A road is defined as having the same meaning as in the Road Traffic Act and includes any highway, road or street open to, or used by, the public and includes every carriageway, footway, reservation and traffic island on it and any parking area in a public place.

Section 192 (1)(a) of the Road Traffic Act 1988 stipulates that a ‘road’ in England and Wales is “any highway and any other road to which the public has access and includes bridges over which a road passes”. To fall within section 192(1) of the RTA 1988 the road must be one to which the public has access. This includes roads which do not qualify as a highway, whilst excluding roads to which the public has no access (see: *Cutter v Eagle Star Insurance Company Limited* [1988]). Whether or not the public has access to a road is a question of fact. If a member of the public has to act in defiance of an expressed or implied prohibition, then that will not be considered a road to which the public has access (see: *Cox v White* [1976] RTR 248).

A road has been held in the case of *Worth v Brooks* [1959] Crim LR 885 to include pavements and boundary grass verges.

If any part of a vehicle is on a road, even where it is partly or mostly on some other private land, the vehicle can be treated as being on a road - *Randall v Motor Insurers’ Bureau* [1969] 1 All ER 21.

A car park is not a road - *Clarke v Kato* [1998] 1 WLR 1647.

6 Offences and defences

Offences

(See also the 'Smokefree vehicles decision-making flowchart' in Appendix 1 and the 'Table of offences and penalties' in Appendix 2.)

There are two offences:

- for someone to smoke in an enclosed private vehicle with someone under age 18 present;

and

- for a driver not to stop someone smoking.

Note: Electronic cigarettes and all forms of nicotine vaporisers are not included within the definition of smoking.

The law applies to both moving and stationary vehicles and whether they are located on a road or on private land, for example a private driveway. There is an exemption for stationary caravans and motor caravans when being used as living accommodation (see Section 5 'Legislative requirements relating to smokefree vehicles').

Smoking in a private vehicle

From 1st October 2015 the Smoke-free (Private Vehicles) Regulations 2015 prohibit any person from smoking in any enclosed private vehicle when another person under the age of 18 years old is present inside the vehicle.

This applies to both the driver and any passengers.

Failing to prevent smoking in a private vehicle

From 1st October 2015 the Smoke-free (Vehicle Operators and Penalty Notices) (Amendment) Regulations 2015 make it an offence for the driver to fail to prevent smoking in an enclosed private vehicle when another person under the age of 18 years is present inside the vehicle.

This offence will be in addition to the offence committed by the driver if they are smoking.

Determining age

It will be necessary to establish whether there is a person in the vehicle under the age of 18. It is expected that the focus of attention will be on vehicles in which young children are present and age will not be a matter of dispute.

The powers available to enforcement officers include being able to require people they are investigating for a possible offence to provide information which they consider necessary for that purpose such as their name, age and address. In cases of doubt or refusal the enforcement officers will still be able to make a reasonable assessment of the person's age. Police officers are also able to ask for proof of identity.

Anyone who smokes in a smokefree private vehicle when a person under 18 is present would be guilty of an offence, regardless of their own age. This is the case with the current smokefree legislation and therefore this is a consistent approach.

How the law applies to 17 year olds and younger people

As passengers :

- The law is in place to protect all children and young people under age 18 so no one should smoke in the vehicle when they are present
- People of any age who do smoke in the vehicle commit an offence, and the enforcement officers will be expected to use their discretion in deciding on the appropriate action to take.

As drivers:

- The law applies to every driver - including those aged 17 and those with a provisional driving licence. If a passenger is smoking then the driver could be committing an offence if they fail to stop them
- The law does not apply if the driver is 17 years old and is on their own in the vehicle.

Powers of entry and offence of obstruction

Powers of entry are contained in Schedule 2 of the Health Act 2006 and allow authorised officers (on production of authority if requested) to: enter at any reasonable hour (in the case of a vehicle this would include any time that it was occupied); to carry out an inspection and examination; to take samples and retain physical evidence; and to “require any person to give him such information, or afford him such facilities and assistance, as he considers necessary for that purpose”.

Section 11 of the Health Act 2006 provides for the offence of obstruction by any person who intentionally obstructs an authorised officer, or

- Without reasonable excuse, fails to give any facilities, assistance or information which the officer reasonably requires, or
- makes a statement which is false or misleading

A person who commits an offence of obstruction is liable to a fine of up to level 3 on standard scale (currently up to £1000).

Note: Police powers are set out in the ‘Police and Criminal Evidence Act 1984 (section 24). A person who is suspected of committing an offence can be required to provide their name and address. If the person refuses, or is suspected of giving false information, the police have the power of summons – so the person could be arrested if the circumstances justify this course of action.

Defences

The Health Act 2006 provides the following defences:

Section 7(4) offence - Smoking in a smokefree place:

- That he did not know, and could not reasonably have been expected to know, that the premises or vehicle were smokefree.

Section 8(5) offence - Failing to prevent smoking in a smokefree place:

- That he took reasonable steps to cause the person in question to stop smoking, or
- That he did not know, and could not reasonably have been expected to know, that the person in question was smoking, or
- That on other grounds it was reasonable for him not to comply with the duty.

These defences might be employed by a driver or passenger who is found to be smoking on the basis that they did not know the age of a passenger who is under the age of 18, or had been misled as to their age. In order to claim the defence the person would necessarily admit that smoking had been taking place.

A driver may claim that their responsibility for the safety of passengers in a moving vehicle, and to

other road users, needed to take precedence and prevented them from taking immediate action to stop a person smoking in the vehicle.

If a person charged with an offence relies on a defence and provides evidence in support, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.



7 Enforcement actions

Enforcement options

In relation to private vehicles enforcement action can be taken in respect of two separate offences under the Health Act 2006:

Section 7(2) Person who smokes in a smokefree vehicle (any person smoking)

Section 8(4) Person having the management or control of a smokefree vehicle fails to stop a person from smoking there (driver).

Use of fixed penalty notices

(Appendix 3 contains a fixed penalty notice flowchart.)

An authorised officer of an enforcement authority who has reason to believe that a person has committed an offence under section 7(2) or section 8(4) of the Act may give that person a penalty notice in respect of the offence.

The enforcement authority can choose, as an alternative to issuing a FPN, to proceed to prosecution for the offence. This course of action may be appropriate in dealing with persistent offenders.

Offenders being issued with a FPN can decline to accept it and may opt for a summary hearing. They may also be prosecuted should they fail to pay the penalty required by the FPN having accepted one. They may not however accept a FPN and also opt for summary trial (i.e. pay a discounted amount to discharge the FPN but contest the matter in court).

The person issued with the FPN may:

- pay the penalty, within the 29 day payment period or taking advantage of the discounted rate for early payment. Payment of the FPN discharges all liability and the matter is closed and not recorded as a conviction.
- give notice in writing to the enforcement authority requesting a Court hearing in respect of the offence for which they have received the FPN. Legal proceedings may then be brought against them before the end of the penalty payment period with the enforcement authority relying on the evidence used to support the issuing of the FPN as the evidence to support the prosecution. If the person changes their mind and then pays the discounted or penalty amount, then the proceedings may not be continued..
- fail to pay the penalty before the 29 day payment period elapses. Legal proceedings may then be brought against them for the offence to which the penalty relates, not the failure to pay the penalty, with the enforcement authority relying on the evidence used to support the issuing of the FPN as the evidence to support the prosecution.

Withdrawal of notices

There is no right of appeal against the service of a FPN but the person on whom the FPN is served may ask questions or put forward information that they feel relevant to the

issuing of the FPN. Should such information suggest that for example the FPN has been incorrectly issued then the enforcement authority may give notice in writing to the person and withdraw the FPN. If any monies have already been paid, these must be repaid.

Failure to pay a Fixed Penalty Notice

If a person on whom a FPN has been issued fails to pay the penalty within the 29 day payment period the enforcement authority may institute legal proceedings for the offence to which the penalty notice relates.

Deciding the course of action

It is a matter for the discretion of the authorised officer to decide whether or not to take formal enforcement action. The legislation provides that authorised officers may issue FPNs to alleged offenders but does not require them to do so.

The officer will however be expected to take account of any enforcement protocol that their employer has put in place when deciding whether or not to issue a FPN, and whether a FPN is issued or not must be clear about the reasons for the action taken. As with all enforcement measures, action taken should be fair, proportional and consistent and, in the case of local authority officers, decided upon with reference to the Regulators' Code and the enforcement policy statement of the particular council.

Issuing warnings

It is always possible to simply give a verbal warning, and some local authorities may wish to combine this with an invitation to attend a stop smoking service. However, enforcement authorities are strongly advised against creating additional quasi-legal procedures such as 'warning notices'.

Practical considerations

Authorised officers need to ensure that a FPN has been properly served. This may require serving immediately on the spot. If a FPN is sent recorded delivery a record of this must be kept by the officer.

If authorised officers experience a situation where the person they wish to serve with a FPN does not provide their name and address on request, then the officer should advise the person that such a refusal may constitute an offence of obstruction under the Health Act 2006 for which they may be prosecuted. Further action at this time may not be possible, however a detailed description of the individual may enable subsequent identification and the serving of a FPN for a smoking offence at a later date.

There is no restriction on the time lapse between the commission of the offence and the service of the FPN but if there is any delay it will need to be justified. The statutory limitation of six months will still apply for undertaking summary proceedings. The six months begins from when the offence occurred not from when the FPN is served.

Establishing details of the registered keeper

Where offences have been observed or reported for failure to comply with the requirements of the smokefree legislation in relation to motor vehicles, it may be necessary to establish details of the registered keeper of the vehicle in order to carry out investigations in connection with the offence or to prosecute for the offence.

Regulation 27(1) (a) of the Road Vehicles (Registration and Licensing) Regulations 2002 provides for the release of information from DVLA's vehicle records to councils for the investigation of an offence or decriminalised parking contravention.

For the existing smokefree legislation, councils are able to request information from DVLA either manually or electronically using the Electronic Data Interchange (EDI) link. It is not yet possible to use the EDI link for smoking in private vehicles and manual applications should be made to the DVLA using secure form VQ616 available from Stores.Order.Forms@dvla.gsi.gov.uk

Discussions with the DVLA are ongoing and further guidance will be provided if electronic access becomes available.

The experience in England to date, like that of other countries who have introduced comprehensive smokefree legislation, is that this type of legislation is widely supported by the public, that high rates of voluntary compliance and self-enforcement can be anticipated and that there will therefore be only a minimal need to employ enforcement measures.

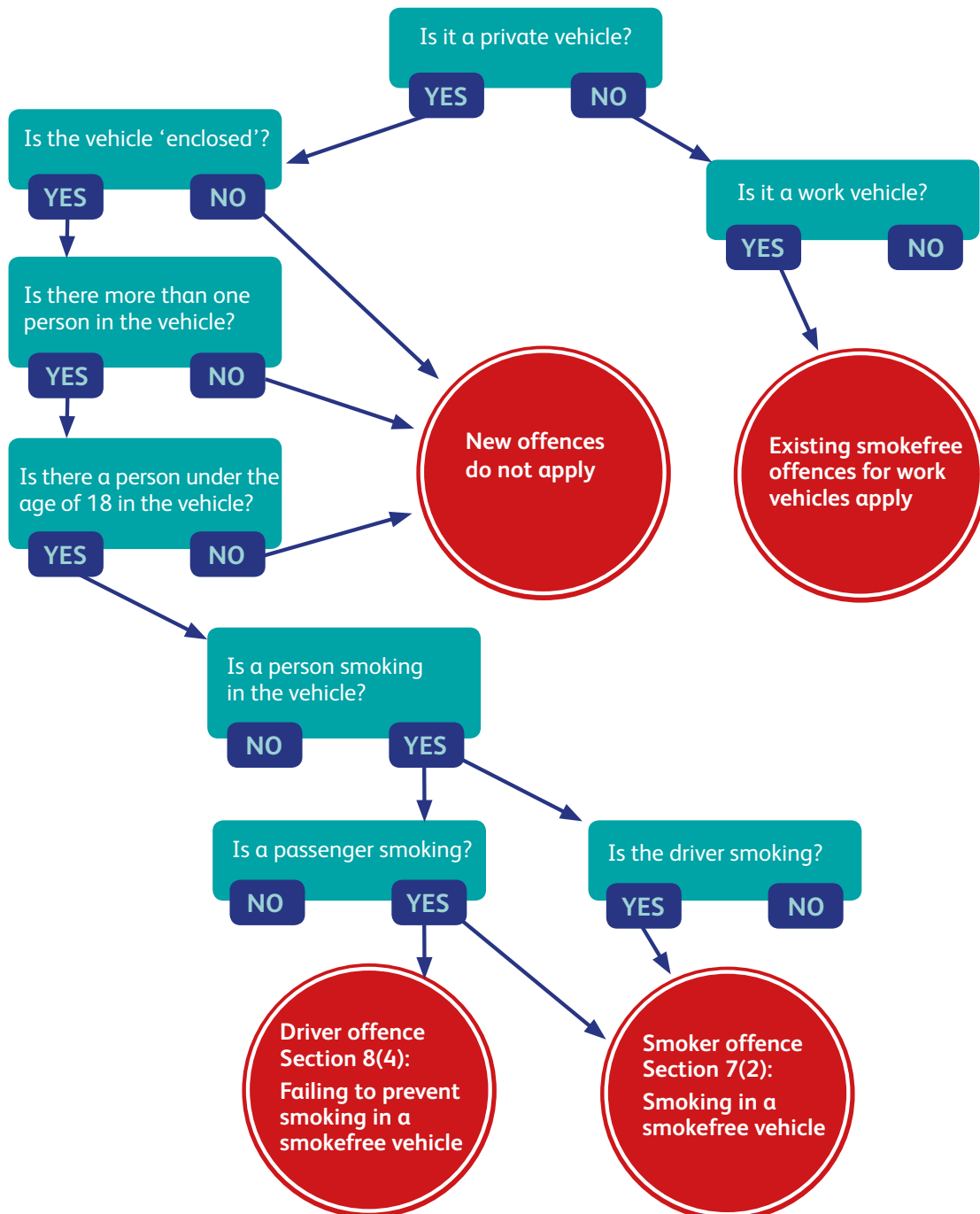


Charlie, Year 5

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Appendix 1

Decision-making flowchart for smokefree vehicles



Appendix 2

Table of offences and penalties

Offence under the Health Act 2006	Defence under the Health Act 2006	FPN IF PAID IN 15 DAYS	FPN IF PAID IN 29 DAYS	Maximum court awarded fine IF FOUND GUILTY
<p>Section 7(2)</p> <p>Person who smokes in a smokefree vehicle (any person smoking)</p>	<p>Section 7(4)</p> <p>It is a defence for the person charged to show that they did not know and could not reasonably have been expected to know that it was a smokefree vehicle.</p>	£30	£50	Level 1 on standard scale – currently up to £200
<p>Section 8(4)</p> <p>Person having the management or control of smokefree vehicle fails to stop a person from smoking there (driver)</p>	<p>Section 8(5)</p> <p>It is a defence for the person charged to show that they took reasonable steps to cause the person in question to stop smoking or that they did not know and could not reasonably have been expected to know that the person in question was smoking or that on other grounds it was reasonable for them not to comply with the duty.</p>	£30	£50	Level 4 on standard scale – currently up to £2500
<p>Section 11</p> <p>Any person who intentionally obstructs an authorised officer or who fails to give assistance when requested to do so or who gives false or misleading information</p>		N/A	N/A	Level 3 on standard scale – currently up to £1000

Appendix 3

Fixed penalty notice guide

Schedule 1 to the Health Act 2006 sets out the Fixed Penalty Notice scheme that applies to the Act.

The Fixed Penalty Notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty.

The information required to be provided with a Fixed Penalty Notice is set out in the Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007 as amended by the Smoke-free (Vehicle Operators and Penalty Notices) (Amendment) Regulations 2015.

A Fixed Penalty Notice must:

- identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence;
- state the name and address of the enforcement authority on whose behalf the officer was acting when the notice was issued;
- state the amount of the penalty and the period within which it may be paid;
- state the discounted amount and the period within which it may be paid;
- state the consequences of not making a payment within the period for payment;
- state the person to whom and the address at which payment may be made (Note: the penalty must be paid to the enforcement authority issuing the FPN);

- state the method or methods by which payment may be made; and
- state the person to whom and the address at which any representations relating to the notice may be made.

Payment periods

The full amount of the fixed penalty as stipulated in the Fixed Penalty Notice will be payable and must be paid within 29 days beginning with the day on which the notice is given.

However, a discounted amount is payable instead of the full amount if payment is made before the end of the period of 15 days beginning with the day on which the Fixed Penalty Notice is given (if the last day does not fall on a working day, the period for payment of the discounted amount is extended until the next working day).

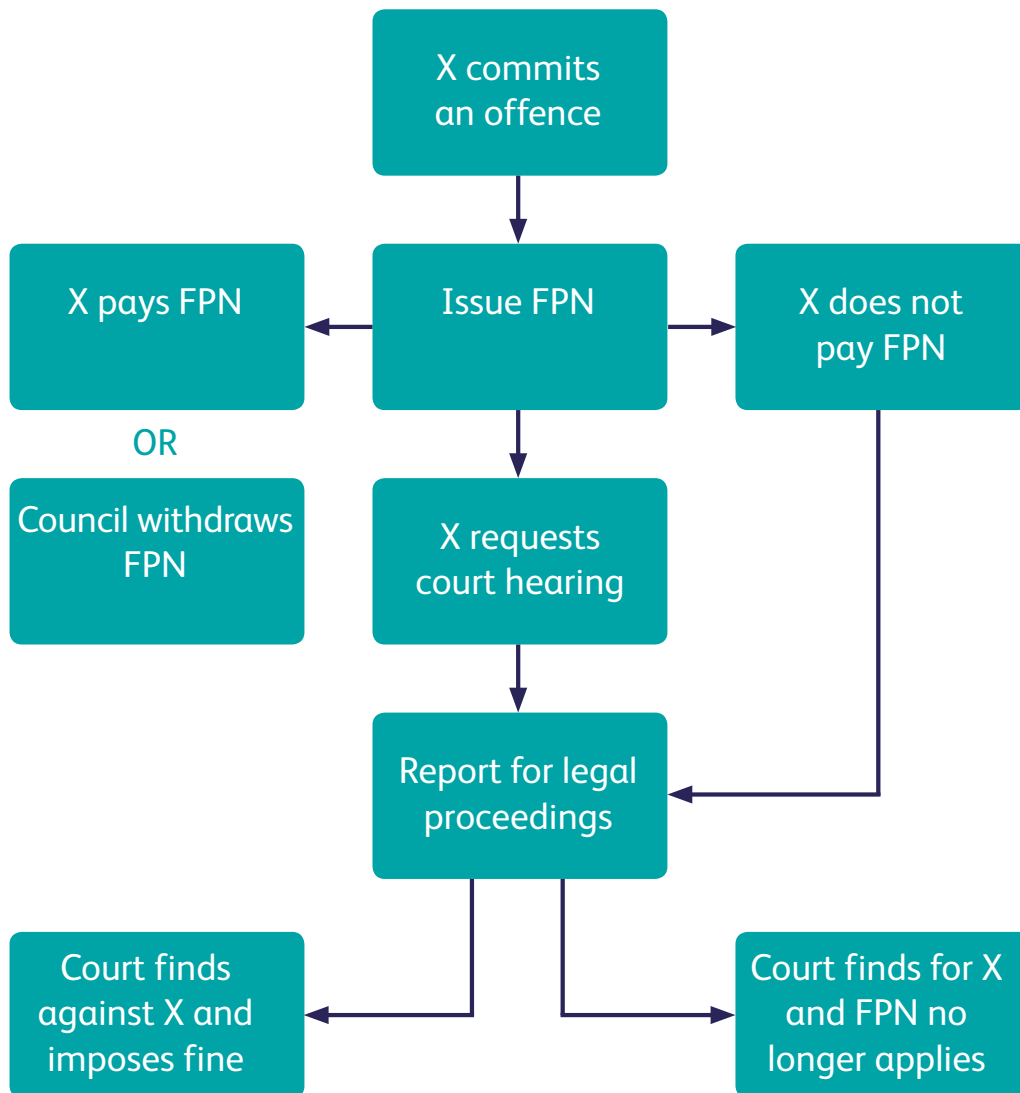
Template fixed penalty notice

Appendix 5 contains a template fixed penalty notice.

The regulations make provision for enforcement authorities to adapt the penalty notices to suit their own requirements in certain ways for example by adding additional information about payment arrangements and including the logo, address etc. of the enforcement authority. The regulations should be checked carefully before making any changes to the template Fixed Penalty Notice or creating an alternative version.

Appendix 4

Fixed penalty notice flowchart



Appendix 5

Fixed penalty notice template

SCHEDULE Regulation 3(2)

Form 2 – Smoking in a smoke-free vehicle / Failing to prevent smoking in a smoke-free private vehicle

[NAME OF ENFORCEMENT AUTHORITY]
[ADDRESS OF ENFORCEMENT AUTHORITY]

HEALTH ACT 2006

SECTION 7 (OFFENCE OF SMOKING IN A SMOKE-FREE PLACE)

**SECTION 8 (OFFENCE OF FAILING TO PREVENT SMOKING IN A SMOKE-FREE PLACE:
PRIVATE VEHICLE)**

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 (if known): _____

Male/female (circle one)

I, _____ (name), an authorised officer of [name of enforcement authority] under section 10 of the Health Act 2006, have reason to believe that you committed an offence under (tick one box)

Section 7 of the Health Act 2006 (smoking in a smoke-free place(a)), or

Section 8 of the Health Act 2006 (failing to prevent smoking in a smoke-free place: private vehicle(b))

within premises, a place or vehicle in relation to which [name of enforcement authority] 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 section 7 or 8 of the Health Act 2006 applies, allegedly (details of offence):

(a) Section 7(1) of the Health Act 2006 provides that smoke-free places include smoke-free premises and smoke-free vehicles.

(b) By virtue of regulation 11(1A) of the Smoke-free (Exemptions and Vehicles) Regulations 2007, a private vehicle is smoke-free when it is enclosed, there is more than one person present in the vehicle and a person under the age of 18 is present in the vehicle.

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 beginning with [insert date on which this notice is given]. You will not be liable to conviction for the offence if you pay the fixed penalty within that period. In this Form this period is referred to as the 29 day period.

You can pay a discounted amount of £30 (thirty pounds) if you pay within the period of 15 days beginning with _____ [insert the date on which this notice is given]. If the 15th day is not a working day, you may pay on the next working day. "Working day" means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971. In this Form this period is referred to as the 15 day period.

Information for the immediate attention of the person who has been issued this penalty notice is at Part 2 of this notice. Details about how to pay this fixed penalty are at Part 3 of this notice. Details about how to request a court hearing in relation to this alleged offence are at Part 4 of this notice. If you have any questions, or if you wish to discuss this notice, please contact [insert name and address of enforcement authority and contact details].

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 enforcement authority] named in Part 1 of this notice has reason to believe that you have committed the offence of

- i) smoking in smoke-free premises or vehicle; or
- ii) failing to prevent smoking in a smoke-free private vehicle.

as described in Part 1. Within the 29 day period specified in Part 1, 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 enforcement authority] as an enforcement authority by virtue of section 10 of the Health Act 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 1 on the standard scale. A person found guilty of the offence of failing to prevent smoking in a smoke-free private vehicle is liable on summary conviction to a fine not exceeding level 4 on the standard scale(a).

(a) Currently £2,500 – see section 37 of the Criminal Justice Act 1982 (c.48) as amended by section 17 of the Criminal Justice Act 1991 (c.53).

PART 3
PAYING THE PENALTY

The amount of the fixed penalty is £50 (fifty pounds). It must be paid within the 29 day period which is specified in Part 1.

You can pay a discounted amount of £30 (thirty pounds) if you pay within the 15 day period which is specified in Part 1. If you choose to pay this penalty, no further action will be taken in respect of the alleged offence described as 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 sending it with payment to the address stated in that Part, or by completing Part 3A below and paying in person at [name and address of enforcement authority].

Acceptable methods of payment include cash, cheque, postal order or money order OR online at the following web address [address for making online payments]. Cheques, postal orders or money orders should be made payable to [name of enforcement authority]. If you choose 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 this payment of the penalty, you must ask for one at the time of the 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.

PART 3A
PAYMENT OF FIXED PENALTY ISSUED UNDER SECTION 7 OR 8 OF THE HEALTH ACT 2006
(OFFENCE OF SMOKING IN A SMOKE-FREE PLACE OR OFFENCE FAILING TO PREVENT
SMOKING IN A SMOKE-FREE PRIVATE VEHICLE)

This slip must accompany all payments

To: [Name and address of enforcement authority where payment should be sent]:

Penalty notice Number: _____

I enclose the amount of:

(tick one box)

- £30 (if the payment is made within the 15 day period specified in Part 1)
 £50 (if the payment is made within the 29 day period specified in Part 1)

Full name of alleged offender: _____

Address of alleged offender: _____

_____ Post code: _____

Signature _____ Date _____

PART 4
REQUESTING A COURT HEARING

If you choose to request a court hearing, you must within the 29 day period do so by completing Part 4A and sending it to [name of enforcement authority], or by writing to [name of enforcement authority] at the address state in 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.

PART 4A
HEALTH ACT 2006:
(OFFENCE OF SMOKING IN A SMOKE-FREE PLACE UNDER SECTION 7 OR OFFENCE OF FAILING TO PREVENT SMOKING IN A SMOKE-FREE PRIVATE VEHICLE UNDER SECTION 8)
REQUEST FOR ALLEGED OFFENCE TO BE DEALT WITH BY A COURT OF LAW

To: [Name and address of enforcement authority]

Penalty notice Number: _____

I wish to be dealt with by a court of law for the alleged offence.

Full name of alleged offender: _____

Address of alleged offender: _____

Post code: _____

Signature _____ Date _____

Appendix 6

Voluntary use of signs

The use of no-smoking signs acts as a warning and a deterrent to people who may intend to smoke in contravention of the law. For this reason they have been used extensively since 2007 in securing compliance with the smokefree legislation.

The Smoke-free (Private Vehicles) Regulations 2015 do not make any requirement for no-smoking signs to be displayed in a private vehicle when a person who is under the age of 18 years old is present inside the vehicle.

However the voluntary use of no-smoking signs can be usefully employed by vehicles owners and drivers, and indeed passengers, to inform and advise the occupants not to smoke when a child is present.

The suppliers of hired and rented vehicles can also be encouraged to make use of no-smoking signs.

The presence of a no-smoking sign does not absolve the driver of their legal responsibility to prevent people from smoking in a vehicle when a child is present, however it can assist them in securing compliance by their passengers.

The presence of no-smoking signs should be noted when an offence is being observed and recorded and may be taken into account in determining an appropriate course of action.

Content of signs

A PDF version of a simple no-smoking sign can be downloaded from the **Smokefree England website**²⁴. The advantage of using this sign is that it is universally recognised.

No-smoking signs are commercially available, almost all of which incorporate this no-smoking symbol, and some include the wording “It is against the law to smoke in this vehicle”.

It can be useful to use the words “It is against the law to smoke in this vehicle” because this indicates that the sign is not simply giving advice, but issuing an instruction for which there is a legal sanction and therefore failing to comply can incur a penalty. A version of the standard sign which incorporates these words is provided below and can be copied and displayed.

Personalised signs may be particularly effective, stating for example -

“Smoking in my car will harm my children”

or the signs could be produced by children themselves -

“Do not smoke when Johnny/Jenny is in the car”.



A PDF version of a simple no-smoking sign can be downloaded from the [Smokefree England website](#)²⁴.

Appendix 7

What to do if someone tries to smoke in your vehicle

As the driver of the vehicle you are responsible for ensuring that your passengers travel in safety and that the laws relating to the use of the vehicle are complied with.

These responsibilities include compliance with the requirements of the Smoke-free (Private Vehicles) Regulations 2015.

This means that when there is someone in the vehicle who is under the age of 18 years:

- (a) you cannot smoke, and
- (b) you must prevent other people from smoking.

This applies to you even if you are under the age of 18 years and if you have only a provisional licence and are driving under the instruction or supervision of another person who has a full licence.

It also applies whether the vehicle is moving or not, and whether it is on a road or anywhere else, for example in a parking area or on private land such as a driveway.

The following practical points may help you to deal with a passenger who tries to smoke in your vehicle:

- If you have a no-smoking sign displayed in your vehicle then draw the attention of the person to it and inform them that they will be committing an offence by smoking

- Explain that the law is to protect the health of children and young people under the age of 18 – you can identify the person at risk and ask your passenger to be considerate
- Politely ask them to stop smoking and tell them to extinguish their smoking materials safely – you may need to stop temporarily for them to do so outside of the vehicle
- Tell them that if they cannot wait to smoke until the end of the journey, then you will stop when it is safe and convenient for them to do so legally
- Advise the person smoking that their actions could result in them receiving a Fixed Penalty Notice as well as you, the driver, if you fail to stop them from smoking
- If the person continues to smoke then you will need to decide whether you wish to continue to have them as your passenger on this and future occasions.

Consider making your vehicle smokefree at all times – Passengers who respect you and appreciate the use of your vehicle will comply.

Appendix 8

Tips to keep your car smokefree

Here are some tips to keep your car smokefree²⁵:

Consider stopping smoking completely. It's tough to quit an addictive habit. This new law can be a good time to consider stopping smoking. If you want to stop, you don't have to go it alone. There is support: speak to your GP or contact your local Stop Smoking Service.

Remove all reminders. If you smoke in your car, you may need to clean up. Remove ashtrays and the built-in lighter. Clean your car completely, and vacuum the inside of your car to remove stale leftover cigarette smoke and toxic residue.

Change your habits. Chewing gum and mints can keep your mouth busy when you are craving a cigarette. Those trying to stop smoking may choose from the range of nicotine replacement therapy products (NRT) available through the stop smoking service or over-the-counter at the chemist. These include patches, gums, sprays, inhalators and lozenges all of which provide nicotine in various forms as a substitute for tobacco.

Smoke before you leave on car trips. If you have to, smoke outside your vehicle before driving off.

Hide the cigarettes. Instead of storing your cigarettes in your purse or glove compartment, put them away in the boot of your car.

Take breaks. On long trips, the temptation to light up may get to be too much. Pull over at rest stops or areas that allow smoking and smoke outside the vehicle. Your children will still be close to you, but the open air will make their exposure to secondhand smoke much less dangerous.

Change course. You may want to switch the routes you drive every day to avoid temptations to smoke, like the corner shop where you buy cigarettes.

Pack snacks. Keep a few healthy, non-perishable snacks in your car. Nuts, raisins, and those one-portion snack bags all travel well.

Stay smokefree - even when you're kid-free. Challenge yourself to keep a smokeless car even when you're on your own or with other adults. That way, you keep the air fresh and the upholstery unpolluted and you'll give your own lungs a break.

Beat your cravings. In addition to gum and mints, research other quick "craving cures," like rubbing your hands together (at a stoplight!) or massaging your earlobes.

Remember why you're doing it. In the toughest moments of temptation, remind yourself that the difficulty you feel is nothing compared to the damage that secondhand smoke has on your child's health.

Post a sign. Stick a no-smoking sign to your car windows making it a smokefree zone. If you can't remove your car ashtray, attach small no-smoking stickers to it. Homemade signs made by your kids may be even more meaningful.

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The TOXIC TRUTH behind SMOKING IN CARS WITH CHILDREN



430,000
children aged 11-15 are exposed to second-hand smoke in the family car each week

Concentrations of smoke
in a car
Just one cigarette smoked in a car can create concentrations of smoke **11 times** greater than the average smoky pub

Passive smoking in children costs the NHS
£23 million a year

Second-hand smoke causes around
40 cot deaths a year

Second-hand smoke in children can increase the risk of illnesses such as
asthma attacks
common colds
meningitis
cot death

300,000 GP visits result from second-hand smoke in children each year

35x Safe level
Smoking in a car can create pollution levels 35 times greater than those deemed safe by the World Health Organisation
Level of pollution from smoking in a car

80% of cigarette smoke is invisible

Australia
Canada
Cyprus
South Africa
USA
Countries in which a ban already exists on smoking in cars carrying children include:

Cigarette smoke contains
4,000 chemicals

Will you support the ban?
86% of children support the ban
80% of adults support the ban

70 cancer-causing chemicals including radioactive Polonium-201

blf.org.uk/SiC



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