



Department
of Health

Smoking in private vehicles carrying children - consultation on proposed regulations to be made under the Children and Families Act 2014

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1. Purpose of this consultation

- 1.1 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. Today, many children in England report being exposed to secondhand smoke in private vehicles, including the family car.
- 1.2 In February 2014, Parliament voted in favour of legislation that gave the Secretary of State powers to bring forward regulations to make private vehicles carrying children smokefree. These regulation-making powers are at Section 95 of the Children and Families Act 2014.
- 1.3 Given the view of Parliament, the Government will proceed with the introduction of regulations to end smoking in private vehicles carrying children in England. The purpose of this consultation is to seek views on draft regulations before they are made.
- 1.4 Under the proposed regulations, existing smokefree legislation as set out in the Health Act 2006 will be extended, so that it would be an offence to:
 - smoke in a private vehicle with someone under age 18 present; and
 - fail to prevent smoking in a private vehicle with someone under age 18 present.
- 1.5 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.
- 1.6 The aims of these proposed regulations on smoking in private vehicles carrying children would be 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.

- 1.7 We are seeking the views of those with an interest on the draft regulations that would prohibit smoking in private vehicles carrying children at **Appendix A**. We invite responses to the consultation questions at **Appendix B**.
- 1.8 We also seek views on the consultation-stage impact assessment and equality analysis which have been published alongside this consultation document.

2. Background

- 2.1 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. 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.¹
- 2.2 In 2010, the Royal College of Physicians (RCP) published a report titled *Passive Smoking and Children* that synthesised evidence and research on this issue. The RCP report found that children are particularly vulnerable to secondhand smoke exposure, and that relative to children whose parents are non-smokers, secondhand smoke exposure in children is typically around three times higher if the father smokes, over six times higher if the mother smokes and nearly nine times higher if both parents smoke. Children from socio-economically disadvantaged backgrounds are generally more heavily exposed to secondhand smoke than other children.²
- 2.3 A 1998 report of the Government's independent Scientific Committee on Tobacco and Health (SCOTH) concluded that smoking in the presence of children is a cause of serious respiratory illness and asthmatic attacks. In 1999, the World Health Organization (WHO) convened an international consultation on secondhand smoke and child health. Its conclusions were similar to those of the 1998 SCOTH report. The WHO found that 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.³

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

² Royal College of Physicians (2010). *Passive Smoking and Children*. RCP, London.

³ SCOTH (1998). *Report of the Scientific Committee on Tobacco and Health*. TSO, London.

- 2.4 According to a 2004 report of SCOTH, a considerable number of studies have been published since 1998 confirming adverse effects of exposure to secondhand smoke on a variety of endpoints in children. These include impairment of lung function, respiratory symptoms in adolescents, wheezing, and school absence due to respiratory illness, middle ear disease and recurrent ear infections.⁴ Secondhand smoke exposure can increase the risks of meningitis in children. Evidence regarding the health consequences of exposure to secondhand smoke is described in detail by the US Surgeon General, who suggested that for children, exposure to secondhand smoke may lead to respiratory illnesses as a result of adverse effects on the immune system and on lung growth and development.⁵
- 2.5 The 2010 RCP report suggested that exposure to secondhand smoke is a major cause of disease in children, and is responsible for over 300,000 UK general practice consultations and about 9,500 hospital admissions in the UK each year. The RCP emphasises in the report that this entire excess disease burden is avoidable.
- 2.6 In 2007, smokefree legislation was introduced in England and Wales to protect employees and the public from the harmful effects of secondhand smoke. That legislation does not extend to private vehicles.
- 2.7 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 Research shows that smoking in vehicles can result in the accumulation 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 lengthy. Research has shown that smoking just a single cigarette in a car can generate high levels of microscopic air pollutants, and where cars are ventilated (for example, air conditioning switched on or having the smoking driver hold the cigarette next to

⁴ SCOTH (2004). *Secondhand Smoke: Review of evidence since 1998*. Department of Health, London.

⁵ US Surgeon General (2006). *The Health Consequences of Involuntary Exposure to Tobacco Smoke*. US Department of Health and Human Services, Rockville.

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.

a half-open window), the average levels air pollutants, while reduced, can still be at a high level.⁸

- 2.8 The Department of Health continues to work to encourage positive behaviour change with respect to smoking in the home and family car among parents and other smokers, including through social marketing campaigns. Evaluation of our 2013 campaign identified success in changing both attitudes and behaviours with 86% of those surveyed agreeing that secondhand smoke can cause significant harm to children and 37% saying that they took action (either to protect others from their secondhand smoke or to quit smoking) in response to the campaign.⁹
- 2.9 The Department of Health and Public Health England are committed to continuing action to protect children from the serious health harms from exposure to secondhand smoke by encouraging voluntary action. We will continue our work to increase awareness of the harms from secondhand smoke and encourage positive behaviour change among smokers.

3. The regulations

- 3.1 The existing smokefree legislation is contained in the Health Act 2006 and regulations made under that Act. This legislation defines smokefree places. The draft regulations that are now being consulted on are set out in **Appendix A**.

Vehicles

- 3.2 Vehicles used by the public and work vehicles are already smokefree under existing legislation. A smokefree place is somewhere where smoking is not permitted. The draft regulations define private vehicles as being all road vehicles that are not already covered by existing smokefree legislation. We propose that a private vehicle would become a smokefree place when:
- it is enclosed;
 - there is more than one person present; and
 - a person under age 18 is present.
- 3.3 The regulations relate to *enclosed vehicles* that are on the road. Enclosed means enclosed wholly or partly by a roof and by any door or window that may be opened. It does not include, for instance, a motorbike or a convertible car with the roof completely down.

⁸ Sendzik, T. et al (2009). "An experimental investigation of tobacco smoke pollution in cars" in *Nicotine and Tobacco Research*. 2009:11(6), pp.627-34.

⁹ Further information available at: <http://resources.smokefree.nhs.uk/campaign>

- 3.4 Ships, hovercraft and aircraft are not included in these proposed regulations, as they are covered under different legislation.
- 3.5 For some people, their vehicle may also act as a home, for example a caravan or a motorhome (or motor caravan). The proposed regulations would apply to such vehicles when they are used as a vehicle but not when they act as a home or living accommodation. The proposed regulations include an exemption for a caravan or motorhome that is stationary and not on the road. A road is defined as having the same meaning as in the Road Traffic Act¹⁰ and covers any highway where there is public access including verges, lay-bys and car parks if there is a public right of access. A vehicle stopped in a car park or grass verge would be considered to be on the road and so the proposed offences would apply in such circumstances.

Offences

- 3.6 The Health Act 2006 contains the following two offences which, under the draft regulations, would apply to private vehicles when a person under the age of 18 is present:
- smoking in a smokefree vehicle; and
 - failure to prevent smoking in a smokefree vehicle.¹¹
- 3.7 These offences have applied to vehicles which may be used by the public or are work vehicles for more than one person since smokefree legislation was implemented in 2007.¹²
- 3.8 The person committing an offence of smoking in a private vehicle which is smokefree would be the individual that is smoking. The person committing an offence of failing to prevent smoking in a private vehicle which is smokefree would be the driver.
- 3.9 Under the proposed regulations, anyone who smokes in a smokefree private vehicle would be guilty of an offence regardless of their age. No age-related exemptions are proposed. The offence of failing to prevent smoking in a smokefree vehicle falls on the driver of the car in all instances. This would

¹⁰ Section 192 of the Road Traffic Act 1988, available at: www.legislation.gov.uk/ukpga/1988/52/section/192

¹¹ Sections 7 and 8 of the Health Act 2006, available at: www.legislation.gov.uk/ukpga/2006/28/part/1/chapter/1/crossheading/offences-relating-to-smoking-in-smokefree-premises-etc

¹² The Smoke-free (Exemptions and Vehicles) Regulations 2007, available at: www.legislation.gov.uk/ukSI/2007/765/regulation/1/made

apply equally to provisional licence holders, who are required to abide by laws relating to driving.

3.10 The only situation that is excluded is where the driver is under the age of 18, is the only person in the car and is smoking. In that situation, the vehicle would not meet the conditions to be smokefree under the proposed regulations, because there would not be more than one person in the vehicle. Under the proposed regulation, the offences would not apply.

3.11 Under smokefree legislation, vehicles that are required to be smokefree are also required to display no-smoking signs. We do not propose requiring no-smoking signs to be displayed in private vehicles.

Penalties

3.12 A person who does not comply with the law would be committing a criminal offence. With respect to smoking in private vehicles carrying children, enforcement officers would be able to issue fixed penalty notices for both offences (smoking in a smokefree vehicle and failure to prevent smoking in a smokefree vehicle). The proposed fixed penalty amount for both offences would be £50.

3.13 A person who receives a fixed penalty notice could choose to have the matter dealt with by a court. If a person does not pay a fixed penalty notice, the matter may also be referred to a court to be dealt with. An enforcement body may also decide to refer an alleged offence directly to court to be dealt with.

3.14 On conviction of the offence of:

- smoking in a smokefree vehicle, a court can award a fine to a maximum of level 1 on the standard scale; and
- failure to prevent smoking in a smokefree vehicle, a court can award a fine to a maximum of level 4 on the standard scale.¹³

3.15 Defences are already set out in the Health Act 2006. For the offence of smoking in a smokefree vehicle, it is a defence for the person to show that they did not know and could not reasonably have been expected to know that it was meant to be smokefree. For the offence of failing to prevent smoking in a smokefree vehicle, it is a defence for the person to show that they took reasonable steps to cause the person smoking to stop smoking, or they did not and could not have reasonably known the person was smoking, or that there was some other reasonable ground for not complying with the duty.

¹³ The value of the fine at level 1 is due to increase from £200 to £800 and at level 4 from £2,500 to £10,000, in Autumn 2014.

Enforcement

- 3.16 We envisage that enforcement will be largely taken forward by local police officers in conjunction with their wider functions on road safety. Under existing powers, police officers would be able to request that a vehicle stops if they suspect that an offence is being committed.
- 3.17 Local authorities would also be able to enforce the proposed regulations, by authorising appropriate officers, but would not have the powers to stop moving vehicles. We see an important role for both local authority regulatory officers, who enforce existing smokefree legislation, in working jointly with police on local enforcement activities, as well as continuing their efforts to build compliance for smokefree legislation generally. Local authority regulatory officers played a key role in the achievement of the very high levels of compliance seen with existing smokefree legislation.
- 3.18 Decisions about whether to issue warnings, fixed penalty notices or whether to refer an alleged offence directly to court to be dealt with would be at the discretion of enforcement bodies.
- 3.19 Arrangements regarding the specifics of fixed penalty notice forms will be determined in the future, in consultation with enforcement bodies.
- 3.20 Arrangements for the effective enforcement of legislation are important and we welcome comments on our proposals. However, 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.
- 3.21 Public Health England will continue its work on behaviour change in this area, including through social marketing campaigns. These campaigns will play a role in building awareness of the legislation in advance of it coming into force.

Territorial scope of the regulations

- 3.22 The regulations would apply to England only.

4. Impact assessment

- 4.1 A consultation-stage impact assessment is published alongside this consultation document. We welcome comments on this impact assessment and any evidence or information which would improve any of the assumptions

or estimates that have been made in the consultation-stage impact assessment.

- 4.2 We have also made an initial assessment of the impact on equality, which is published alongside this consultation document and we welcome any additional information in relation to how these proposals can contribute to us fulfilling our Public Sector duties under the Equality Act 2010.¹⁴

5. How to get involved in the consultation

5.1 The consultation questions are set out at **Appendix B**. The consultation will run for 6 weeks, from Tuesday 15 July to midnight on Wednesday 27 August 2014. We welcome responses from any interested person, organisation or business.

5.2 Respondents are encouraged to provide their views online but responses can be made in any of the following ways:

- Completing the online form at:
<http://consultations.dh.gov.uk/tobacco/smokefree-private-vehicles>
- Filling in the response form by downloading it at:
www.gov.uk/government/consultations
- Emailing your response to: **smokefreevehicles@dh.gsi.gov.uk**
- Posting your response to:

Smoking in Private Vehicles Consultation
Department of Health
6th Floor, Wellington House
133-155 Waterloo Road
London
SE1 8UG

5.3 The purpose of this consultation is to seek the views of interested people, organisations and businesses on the draft regulations prohibiting smoking in

¹⁴ Bodies subject to the Equality Duty must, when delivering their services and performing their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a particular protected characteristic and people who do not share it; and
- Foster good relations between people who share a particular protected characteristic and people who do not share it.

The public sector equality duty covers the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race (includes ethnic or national origins, colour or nationality), religion or belief (includes lack of belief), sex and sexual orientation. It also applies to marriage and civil partnership status, but only in respect of the requirement to have due regard to the need to eliminate discrimination.

private vehicles carrying children and how these provisions would work in practice. We ask that you provide references to research or other evidence with your responses.

- 5.4 If you wish to get a copy of this consultation document in an alternative format, or need to respond in an alternative format for accessibility reasons, please contact us using the email or postal addresses given in paragraph 5.2.
- 5.5 The Department of Health will not be able to respond specifically to individual consultation responses.

6. Declaration of direct or indirect links to the tobacco industry by respondents

- 6.1 As a Party to the World Health Organization's Framework Convention on Tobacco Control (FCTC), the United Kingdom has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To meet this obligation, **we ask all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry.** We will still carefully consider all consultation responses from the tobacco industry and from those with links to the tobacco industry and include them in the published summary of consultation responses.

7. Next steps

- 7.1 All responses received by midnight on the closing date of Wednesday 27 August will be carefully considered. A summary report of consultation responses will be published on the Department of Health website in due course after the completion of the consultation.
- 7.2 A final decision will be made on the content of the regulations. Subject to Parliamentary approval, we anticipate the new offences would come into force in 2015. There will be discussions with Public Health England about optimum timing of education and behaviour change campaigns in relation to these new offences.

8. Comments on the consultation process itself

- 8.1 If you have concerns or comments which you would like to make relating specifically to the consultation process itself please contact

Consultations Coordinator
Department of Health
2E26, Quarry House
Leeds
LS2 7UE

e-mail: consultations.co-ordinator@dh.gsi.gov.uk

Please do not send consultation responses to this address.

9. Confidentiality of information

- 9.1 We will manage the information you provide in response to this consultation in accordance with the Department of Health Information Charter.¹⁵
- 9.2 Please be aware that, under the Freedom Of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. If you want the information that you provide to be treated as confidential, it would be helpful if you could explain to us why you regard the information you have provided as confidential. 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 can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 9.3 The Department will process your personal data in accordance with the Data Protection Act and in most circumstances this will mean that your personal data will not be disclosed to third parties.

¹⁵ Available at: www.gov.uk/government/organisations/department-of-health/about/personal-information-charter

Smoking in private vehicles carrying children – draft regulations to be made under the Children and Families Act 2014

DRAFT STATUTORY INSTRUMENTS

20XX No.

PUBLIC HEALTH, ENGLAND

The Smoke-free (Private Vehicles) Regulations 20XX

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	--	***

The Secretary of State for Health, in exercise of the powers conferred by sections 5, 6(2)(b), 8(3), 10(1) and (2), and 79 of the Health Act 2006⁽¹⁶⁾, makes the following Regulations, a draft of which was laid before Parliament in accordance with section 79(4) of that Act and approved by a resolution of each House of Parliament:

Citation, commencement, application and interpretation

1.—(1) These Regulations which may be cited as the Smoke-free (Private Vehicles) Regulations 2014 shall come into force on ...

(2) These Regulations apply in relation to England.

(3) In this Regulation—

“the Act” means the Health Act 2006.

“caravan” means a trailer which is designed for road use and provides mobile living accommodation.

“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.

“private vehicle” means any vehicle other than a vehicle which is used—

⁽¹⁶⁾ 2006 c. 28. Sections 5, 9, 10(1) and 79 were amended by section 95 of the Children and Families Act 2014 (c. 6). As to the meaning of “appropriate national authority” see section 82(1).

- (a) by members of the public or a section of the public (whether or not for reward or hire), or
- (b) in the course of paid or voluntary work by more than one person (even if those persons use the vehicle at different times, or only intermittently). A vehicle is not used in the course of paid or voluntary work where it is 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;

“road” has the same meaning as in Section 192(1) of the Road Traffic Act 1988(17).

Vehicles with children present

2.—(1) Subject to the following paragraphs of this regulation, a private vehicle or any part of a private vehicle shall be smoke-free if—

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

(2) A vehicle or part of a vehicle is enclosed for the purposes of paragraph (1) where it is enclosed wholly or partly by a roof and by any door or window that may be opened.

(3) Except where paragraph (4) applies, “roof” in paragraph (2) includes 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.

(4) In relation to a vehicle that is engaged in conveying persons, roof does not include any fixed or moveable structure or device which is completely stowed away so that it does not cover all or any part of the vehicle.

(5) This regulations applies to all vehicles other than—

- (a) A caravan or motor caravan that is stationary and not on a road;
- (b) aircraft;
- (c) ships or hovercraft in respect of which regulations could be made under section 85 of the Merchant Shipping Act 1995(18) (safety and health on ships), including that section as applied by any Order in Council under section 1(1)(h) of the Hovercraft Act 1968(19) or to persons on any such ships or hovercraft;

No-smoking signs

3. In The Smoke-free (Signs) Regulations 2012(20) after regulation 1(3) insert—

“(4) These Regulations do not apply to vehicles that are smoke-free by virtue of The Smoke-free (Private Vehicles) Regulations 2014.”

(17) 1988 c. 52. Section 192(1) was amended by the New Roads and Street Works Act 1991 (c. 22), Sch.8 (IV) para.121(4); the Treaty of Lisbon (Changes in Terminology) Order (2011/1043), Pt 2 art.6(1)(d); the Access to Justice Act 1999 (c. 22) Sch.15(V)(1) para.1, and by the Road Traffic Act 1991 (c. 40), Sch.4 para.78(2) and (3).

(18) 1995 c.21. Section 85 was amended by the British Overseas Territories Act 2002 (c.8), section 2, and by the Merchant Shipping and Maritime Security Act 1997 (c.28), sections 8 and 29 and Schedule 7, Part 1.

(19) 1968 c.59. Section 1 was amended by the Control of Pollution Act 1974 (c.40), section 108 and Schedule 3; the Supreme Court Act 1981 (c.54), section 152 and Schedule 5; the Environmental Protection Act 1990 (c.43), section 162 and Schedule 15; the Merchant Shipping Act 1995 (c.21), section 314 and Schedule 13; the Environment Act 1995 (c.25), section 120 and Schedule 24; the Merchant Shipping and Marine Security Act 1997 (c.28), section 29 and Schedule 6; the Constitutional Reform Act 2005 (c.4), section 59 and Schedule 11, and by S.I. 1978/1049. It was also modified by the Pilotage Act 1987 (c.21), section 32 and Schedule 2 and by the Merchant Shipping Act 1995, section 310

(20) S.I. 2012/1536.

Failing to prevent smoking in smoke-free private vehicles

4. The driver of a vehicle that is smoke-free by virtue of these regulations is under a duty corresponding to that in section 8(1) of the Act to cause any person who is smoking in the vehicle to stop smoking.

Enforcement

5.—(1) The chief officer of police of each police force, in relation to the police area for which the force in question is maintained, is designated as an enforcement authority for the purposes of Chapter 1 of Part 1 of the Act⁽²¹⁾.

(2) An enforcement authority designated in paragraph (1) has enforcement functions in relation to vehicles that are smoke-free by virtue of these regulations.

(21) The expression “chief officer of police”, “police force” and “police area” are defined, in relation to England and Wales, in Schedule 1 of the Interpretation Act 1978 (c 30) and section 101 of the Police Act 1996 (c 16).

Smoking in private vehicles carrying children - consultation questions about the proposed regulations

1. The regulations make it an offence to smoke in an enclosed private vehicle when there is more than one person present and a person under the age of 18 is present. This offence would fall on the person smoking regardless of their age. Do you have any comments on this approach?
2. Do you have any comments regarding the proposal for the new offences to apply to caravans and motor caravans when they are being used as vehicles but not when they are being used as homes?
3. Do you have any comments about the intentions regarding the enforcement of the proposed regulations?
4. Do you want to draw to our attention to any issues on the practicalities of implementing the regulations as drafted?
5. Do you have any additional evidence that banning smoking in private vehicles when children are present would contribute to reducing health inequalities and/or help us fulfil our duties under the Equality Act 2010?
6. Do you have any evidence that would inform the consultation-stage impact assessment including any evidence or information which would improve any of the assumptions or estimates we have made in the consultation-stage impact assessment?